

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875-RBK-KMW

**TELEPHONIC
CASE MANAGEMENT CONFERENCE**

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
June 3, 2021
Commencing at 10:00 a.m.

B E F O R E:

**SPECIAL MASTER THE HONORABLE
THOMAS I. VANASKIE**

A P P E A R A N C E S:

MAZIE SLATER KATZ & FREEMAN, LLC
BY: ADAM M. SLATER, ESQUIRE
103 Eisenhower Parkway
Roseland, New Jersey 07068
For the Plaintiffs

GOLOMB & HONIK, P.C.
BY: RUBEN HONIK, ESQUIRE
1835 Market Street, Suite 2900
Philadelphia, Pennsylvania 19103
For the Plaintiffs

KANNER & WHITELEY, LLC
BY: CONLEE S. WHITELEY, ESQUIRE
BY: LAYNE HILTON, ESQUIRE
701 Camp Street
New Orleans, Louisiana 70130
For the Plaintiffs

Camille Pedano, Official Court Reporter
camillepedano@gmail.com
609-774-1494

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

A P P E A R A N C E S (Continued) :

KIRTLAND & PACKARD LLP
BY: BEHRAM V. PAREKH, ESQUIRE
1638 South Pacific Coast Highway
Redondo Beach, California 90277
For the Plaintiffs

GOLDENBERG LAW, LLC
BY: MARLENE J. GOLDENBERG, ESQUIRE
800 Lasalle Avenue, Suite 2150
Minneapolis, Minnesota 55402
For the Plaintiffs

DUANE MORRIS LLP
BY: SETH A. GOLDBERG, ESQUIRE
BY: JESSICA PRISELAC, ESQUIRE
BY: REBECCA BAZAN, ESQUIRE
BY: KELLY ANN BONNER, ESQUIRE
30 South 17th Street
Philadelphia, Pennsylvania 19103
For the Defendants, Prinston Pharmaceuticals,
Solco Healthcare U.S. LLC, and
Zhejiang Huahai Pharmaceuticals Ltd.

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI LLP
BY: CLEM C. TRISCHLER, ESQUIRE
One Oxford Centre, 38th Floor
Pittsburgh, Pennsylvania 15219
For the Defendant, Mylan Pharmaceuticals Inc.

GREENBERG TRAURIG LLP
BY: VICTORIA DAVIS LOCKARD, ESQUIRE
BY: STEVEN M. HARKINS, ESQUIRE
3333 Piedmont Road, NE, Suite 2500
Atlanta, Georgia 30305
For the Defendants, Teva Pharmaceutical Industries Ltd.,
Teva Pharmaceuticals USA, Inc., Actavis LLC,
and Actavis Pharma, Inc.

A P P E A R A N C E S (Continued) :

CIPRIANI & WERNER, P.C.

BY: JESSICA M. HEINZ, ESQUIRE

BY: ERNEST F. KOSCHINEG, ESQUIRE

BY: ETHAN FELDMAN, ESQUIRE

450 Sentry Parkway

Blue Bell, Pennsylvania 19422

And

MORGAN, LEWIS & BOCKIUS, LLP

BY: JOHN P. LAVELLE, JR.

502 Carnegie Center

Princeton, New Jersey 08540

For the Defendants, Aurolife Pharma LLC

and Aurobindo Pharma USA, Inc.

HILL WALLACK, LLP

BY: ERIC I. ABRAHAM, ESQUIRE

NAKUL Y. SHAH, ESQUIRE

21 Roszel Road

Princeton, New Jersey 08540

For the Defendants, Hetero Drugs and Hetero Labs

KIRKLAND & ELLIS LLP

BY: ALEXIA R. BRANCATO, ESQUIRE

601 Lexington Avenue

New York, New York 10022

For the Defendants, Torrent Pharma Inc.

and Torrent Pharmaceuticals Ltd.

ULMER & BERNE LLP

BY: JEFFREY D. GEOPPINGER, ESQUIRE

600 Vine Street, Suite 2800

Cincinnati, Ohio 445202

For the Wholesaler Defendants and AmerisourceBergen

BARNES & THORNBURG, LLP

BY: KRISTEN L. RICHER, ESQUIRE

2029 Century Park East, Suite 300

Los Angeles, California 90067

For the Retailer Defendants and CVS Pharmacy, Inc., and

Rite Aid Corporation

ALSO PRESENT:

LORETTA SMITH, ESQUIRE

Judicial Law Clerk to The Honorable Robert B. Kugler

Larry MacStravic, Courtroom Deputy

1 (PROCEEDINGS held via teleconference before The Honorable
2 Special Master The Honorable Thomas I. Vanaskie at 10:00 a.m.)

3 JUDGE VANASKIE: I think we can get started. We'll
4 follow our normal protocol. I'll ask that when you speak,
5 please identify yourself for me and for our court reporter.
6 I'll also ask that anybody who is not speaking, please silence
7 their phones. And we'll proceed through the agenda letter.
8 I'm going to follow, generally, the agenda letter received from
9 defendants, that order, and we'll go through the letter on an
10 item-by-item basis. All right?

11 And who will be speaking on behalf of the defendants?

12 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I
13 imagine you'll be hearing from a number of defense attorneys
14 today on different issues but I'm happy to take the lead at
15 least, and then we can hand it off for efficiency purposes.

16 JUDGE VANASKIE: Very well. That's great. Thank you.

17 And who will be the lead spokesperson for the
18 plaintiffs?

19 MR. SLATER: Good morning, Your Honor. Adam Slater,
20 and there will be multiple people from plaintiffs' team who
21 will be addressing various issues.

22 JUDGE VANASKIE: Very well. Thank you.

23 First, I wanted to, as I read through the agenda
24 letters for today, I wanted to start off with a compliment
25 because you've accomplished a tremendous amount in a very short

1 period of time and I think both sides need to be commended for
2 the extraordinary effort that you put into this matter and so
3 in that sense, a lot has been accomplished. Of course, there
4 are substantial issues we need to work through and we will try
5 to work through those.

6 The first thing I was going to talk about was the
7 question of -- and I'm really not going to engage in much
8 argument on it today -- the matters involving Mr. Chen, his
9 custodial file and his deposition itself, which I believe is
10 still scheduled for the 21st through the 23rd of June.

11 Mr. Slater, is that correct?

12 MR. SLATER: Yes, Your Honor, that's correct.

13 JUDGE VANASKIE: All right. And I know I have motions
14 that are ripe and ready for decision by me. I'm hoping to have
15 decisions out by early next week on the custodial file and on
16 the question of whether his deposition should be precluded
17 under the apex doctrine. I don't believe I need any additional
18 argument on this but if there's anything else you wanted to say
19 with respect to those two matters, I'll give you an opportunity
20 now.

21 Mr. Goldberg?

22 MR. GOLDBERG: Yes, Your Honor, and I'm not sure if
23 this motion is actually fully briefed.

24 As Your Honor may recall, there were -- after we had
25 raised this issue, there were still three or four depositions

1 to be completed and Your Honor directed that we could
2 supplement the record with that testimony, which we had
3 intended to do today, in fact. And I'm not sure if plaintiffs
4 have actually filed their opposition brief to the motion for a
5 protective order yet. While the custodial file brief is fully
6 -- the custodial file motion is fully briefed, I'm not sure the
7 deposition motion is.

8 MR. SLATER: Your Honor, it's Adam Slater.

9 I can agree that we have not yet, for the plaintiffs,
10 filed our opposition brief. I believe our deadline is this
11 coming Monday.

12 JUDGE VANASKIE: Okay.

13 MR. SLATER: So we're going to try to get it to you
14 before that. We're going to try to get it to you either today
15 or tomorrow. I know our deadline is Monday but we're really
16 working hard to get it done this week.

17 As far as the defense supplementing their motion, you
18 know, that's not something that we think should be necessary.
19 I don't recall what Your Honor specifically said about that and
20 I don't recall leave being granted to supplement the motion,
21 but I'm not really sure what could be added. Our hope would be
22 that we can oppose the motion and Your Honor would then have
23 the papers complete for resolution.

24 JUDGE VANASKIE: We are getting a lot of interference.
25 All right, that seems better now.

1 MR. GOLDBERG: Your Honor, if I may, this is Seth
2 Goldberg.

3 JUDGE VANASKIE: You may.

4 MR. GOLDBERG: During the May 3rd hearing, at Page 45,
5 Line 6 through 9, Your Honor did grant the ZH parties leave to
6 supplement the brief with the testimony of Mr. Du. He was
7 deposed last week. As we indicated to Your Honor in our
8 opening brief that we would be doing so, and we would also be
9 adding the testimony of those two or three witnesses that were
10 deposed, like Mr. Du, after the protective order motion was
11 filed. And as I mentioned, we intended to file that supplement
12 today at the Court's direction.

13 JUDGE VANASKIE: I certainly will not preclude you
14 from supplementing your motion with the testimony that has been
15 presented subsequent to that last conference, and so certainly
16 please proceed with your filing. And, Mr. Slater, please
17 proceed with your opposition brief. You say it is due on
18 Monday. So obviously I misspoke in terms of motions being
19 ripe. The custodial motion is ripe.

20 I do intend to issue a decision on that early next
21 week and I will issue a decision promptly on the protective
22 order motion on the apex witness doctrine promptly because of
23 the fact that the deposition is scheduled for the 21st to the
24 23rd of June, so I know a decision needs to come out on that
25 promptly.

1 So no decision, obviously, has been made yet and we'll
2 take your additional filings and hopefully have the decision to
3 you promptly. But the custodial files we'll move forward on.

4 Anything else on that?

5 MR. SLATER: Nothing for plaintiffs, Your Honor.
6 Thank you.

7 MR. GOLDBERG: Nothing for the ZHP parties.

8 JUDGE VANASKIE: Thank you both very much.

9 The next issue I want to take up was the question with
10 respect to discovery involving Hetero, the Hetero -- what is
11 described in plaintiffs' letter as Hetero's ongoing discovery
12 deficiencies. That's at Page 3 of plaintiffs' agenda letter.

13 Who will be addressing this issue on behalf of the
14 plaintiffs?

15 MR. PAREKH: Good morning, Your Honor. This is Behram
16 Parekh on behalf of plaintiffs.

17 JUDGE VANASKIE: Good morning, Mr. Parekh.

18 MR. PAREKH: So, Your Honor, the main issue that we
19 have, and we have been working with Hetero to resolve these
20 issues, is that it's just, you know, we're running out of time
21 and have run out of time at this point. The three issues in
22 particular that we're most concerned about are the ones that
23 are relevant to the upcoming depo which is Tuesday and
24 Wednesday of next week, and this is an issue that we've been
25 bringing up, you know, for numerous months in numerous letters

1 that we still don't have the documents, you know, regarding the
2 process development that Hetero went through in order to come
3 up with what it called Process III. And we're asking for a
4 firm deadline of June 7th for them to produce all of those
5 documents. And to the extent that they don't, we don't believe
6 that Hetero should be able to rely on those documents going
7 forward because we won't have the ability to take Hetero's
8 deposition and then turn around and use those documents for our
9 general cause Daubert briefing.

10 JUDGE VANASKIE: All right. Who's addressing this
11 issue on behalf of Hetero?

12 MR. ABRAHAM: Good morning, Your Honor. This is Eric
13 Abraham from Hill Wallack. I represent Hetero. I'll take sort
14 of the first swing at this. My colleague, Nakul Shah, is also
15 on the call. He may chime in, in case I goof anything up, if
16 that's okay, Judge.

17 JUDGE VANASKIE: That's fine.

18 MR. ABRAHAM: First of all, we are fine with the June
19 7th deadline. We conferred yesterday with Mr. Parekh on these
20 issues and then worked with our client overnight. There is, we
21 think, a likelihood that the Process III development data was
22 contained in a prior production. If so, we'll identify that by
23 Bates range. If not, we'll make a fresh production of it; not
24 a problem.

25 If Your Honor recalls last time, there were a number

1 of documents that plaintiff had asked us to identify by Bates
2 range to demonstrate that we had done so previously, and we
3 worked with our ESI vendor to be able to do that. We sent
4 plaintiffs a detailed spreadsheet laying out all of the Bates
5 ranges of the prior productions for the documents they claimed
6 to not have. Somehow plaintiffs did not review that
7 spreadsheet before our meet and confer yesterday. I don't mean
8 that as a criticism of plaintiffs, I just want to demonstrate
9 for Your Honor that we're following through on our
10 representations to Your Honor and this won't be any different.

11 There are -- so that sort of puts to bed the Process
12 III development documents. In other words, if they've already
13 been produced, we will identify it by Bates range; no problem.
14 If they haven't, we'll produce it by June 7; no problem.

15 I don't think we're at a point where we should be
16 talking about a remedy if we don't make June 7th. I have no
17 reason to think we won't make June 7th, but we still have
18 Hetero 30(b)(6) deponents that are scheduled that, for various
19 scheduling reasons, we couldn't get done by the 1st. So it's
20 not accurate to say that plaintiffs would not have the
21 opportunity to talk to our witnesses because they will. We'll
22 make that happen.

23 There are, within plaintiffs' letter, also a
24 discussion about missing chromatograms for some NDMA testing
25 that was done by Analys Labs. On our meet and confer

1 yesterday, Mr. Shah was able to point to where those
2 chromatograms existed in our fifth production of documents,
3 which was back over the summer, I believe. So we will be
4 conferring further with Mr. Parekh if he claims that he still
5 doesn't have what he needs and that's not a problem.

6 Kind of the last subject that's within plaintiffs'
7 list are data from Empower. And just to kind of level set on
8 this, Judge, Empower is the software that our client and I
9 think many of the defendants use to kind of track, so to speak,
10 results of the chromatography that occurs. And we learned from
11 some submissions earlier that Aurobindo had, in fact, produced
12 the underlying data from their Empower software and we
13 committed yesterday to plaintiffs that we would do so as well.

14 Plaintiffs acknowledged to us that they weren't quite
15 sure from their experts what the "raw data" meant. So we're
16 making sure -- we're waiting to hear back from plaintiffs to
17 make sure that what we produce is, in fact, produced in a
18 format usable by plaintiffs' experts; not a problem.

19 In advance of that production, they have the output,
20 so to speak, of that data. In other words, they've got the
21 documentation that shows what the result of that testing was.
22 So this isn't a circumstance where plaintiffs remain in the
23 dark on what the result of that testing is.

24 And just to kind of put a finer point on it relating
25 to NDMA, let's, just for discussion purposes, Judge, take as

1 our operating premise that this type of testing can yield
2 results between one and 100. The testimony that has come out
3 is that if NDMA were present in the material being tested,
4 those results would be somewhere between zero and .99. So, in
5 other words, we don't believe that this particular type of
6 testing would yield demonstration of NDMA; but nonetheless,
7 plaintiffs' experts apparently have a view that there may be
8 information to be gleaned from the underlying data, and we have
9 no problem producing it. It's just we're waiting to confer
10 again with plaintiffs about the format of the production.

11 Thank you.

12 JUDGE VANASKIE: Thank you.

13 Mr. Parekh, anything else?

14 MR. PAREKH: Yeah, just one small point, Your Honor,
15 is that we were able to look at the spreadsheet during and
16 after the meet and confer and, again, the issue is what has
17 always been the issue, which is that it's incomplete -- it's an
18 incomplete response to the documents that we requested. It,
19 you know, it covers some of the topics that we've requested but
20 it doesn't cover all the topics, it doesn't result in the
21 production of all of the documents. So it's just this sort of
22 ongoing, you know, bit by bit by bit we're getting there but
23 we're just running out of time.

24 MR. ABRAHAM: May I respond, Your Honor?

25 JUDGE VANASKIE: Yes, certainly, Mr. Abraham.

1 MR. ABRAHAM: Mr. Shah may know better than me, but I
2 believe that some of this -- in some circumstances there was
3 requests, for example, for an SOP and further iterations of the
4 SOP, and in those circumstances where -- I believe what we did
5 was we identified in every circumstance that there were no more
6 versions of it to be produced. But I don't want to get too far
7 over my skis on this, so if I could hand off to Mr. Shah, he
8 may be able to put a finer point on it. But I think the
9 biggest point is to the extent that Mr. Parekh has now reviewed
10 the spreadsheet and feels that there are still some missing
11 items, we're available to meet and confer with him and we'll
12 fill those holes.

13 JUDGE VANASKIE: All right.

14 Mr. Shah.

15 MR. SHAH: Your Honor, I'd just like to add that in
16 addition to providing the detailed spreadsheet setting forth
17 the dates ranges of particular documents that plaintiffs had
18 requested which were already contained in prior Hetero
19 productions, we additionally took the step of including in
20 every cover letter of our last two document productions a
21 detailed list of precisely what documents are included in that
22 production, a notation as to which, for example, SOPs which may
23 have been discontinued, which SOPs were discontinued, which
24 version is the final version, as well as a notation of the
25 documents that are not available and why they are not available

1 within the cover letter.

2 We directed Mr. Parekh to those documents yesterday
3 following our meet and confer as well and are open to an
4 additional meet and conferral regarding anything that may
5 remain outstanding after Mr. Parekh has had the opportunity to
6 review those documents.

7 JUDGE VANASKIE: All right. And you've committed to
8 make your production by June 7th which was the action requested
9 by plaintiffs.

10 So is there anything else for me to address with
11 respect to Hetero?

12 MR. PAREKH: No, Your Honor. Just if the production
13 doesn't happen by June 7th, and there are documents
14 outstanding, we will address those at the next CMC.

15 JUDGE VANASKIE: I think that's about all we can do.
16 Thank you.

17 MR. ABRAHAM: Thank you, Judge.

18 JUDGE VANASKIE: All right. The next issue I wanted
19 to address is Aurobindo. And who will be addressing this issue
20 on behalf of the plaintiffs?

21 MS. GOLDENBERG: Hello, Your Honor. This is Marlene
22 Goldenberg for the plaintiffs.

23 JUDGE VANASKIE: Good morning, Ms. Goldenberg.

24 MS. GOLDENBERG: Good morning.

25 Your Honor, I'm happy to answer any questions that you

1 have or I can just provide you with a brief overview of what's
2 happened since we sent the letter, as I saw that you've read
3 it.

4 We -- during the deposition of Sanjay Singh, which was
5 the most substantive 30(b)(6) deposition that we had, we
6 received, in the middle of that deposition or two hours in, a
7 good portion of the testing data that Mr. Singh was supposed to
8 be presented as a witness on, as well as a number of other
9 productions that we outline in detail in our letter.

10 We also, since then, have taken another 30(b)(6)
11 deposition of an individual named David Palew who was there to
12 testify on a number of class-specific issues but specifically
13 sales to downstream customers as well as other things.

14 Right before that deposition or the night before we
15 got a letter from Aurobindo letting us know that there were a
16 number of other documents they were going to be producing and
17 asking us if we would like to postpone the deposition. As
18 we've told them previously, our expert reports are due in short
19 order and we need to at least have some testimony to give to
20 our experts so that we can meet our burden. And so we weren't
21 able to push that deposition back. And so we moved forward and
22 then the next morning we received another spreadsheet from
23 Aurobindo containing information that should have been produced
24 to us long ago with information about sales to downstream
25 customers.

1 And so what we've seen is that there is or there
2 really appears to be a concerted effort to dump targeted sets
3 of documents on plaintiffs on the eve of or now in the middle
4 of depositions and it's been very difficult for us to obtain
5 testimony on topics when we don't get documents in time to
6 review them before the deposition occurs.

7 And I thought -- sorry. Go ahead.

8 JUDGE VANASKIE: No. Please continue.

9 MS. GOLDENBERG: So just a couple of points about the
10 letter that Aurobindo sent yesterday. I think that letter
11 frankly just talks past the issues. Aurobindo included a large
12 list of documents which they produced in core discovery but the
13 fact that they produced documents in core discovery has -- it's
14 not a saving grace for failing entirely to respond to other
15 sets of discovery that were served upon them. So that doesn't
16 change the fact that they produced two noncustodial documents
17 during the regular discovery period, and those would be the
18 organizational charts that we have referred to in our briefs,
19 and now, as we've seen, in the middle of or right before these
20 other very important depositions we're getting noncustodial
21 documents that had been in Aurobindo's possession the entire
22 time.

23 And so -- and their last point about plaintiffs'
24 failure to meet and confer I guess is just a little puzzling
25 because the letter dealt with past conduct, not anything that

1 we -- you know, we're asking them to do in the future. And if
2 they want to tell us today that they're happy to agree to
3 things, then I guess maybe that meet and confer would have been
4 a little more fruitful than I thought; but absent that, I don't
5 really see how that changes anything.

6 Beyond that, I think we've addressed everything in our
7 letter, and I'm happy to answer any questions Your Honor has.

8 JUDGE VANASKIE: Who is addressing this issue for
9 Aurobindo?

10 MR. LAVELLE: Your Honor, John Lavelle from Morgan
11 Lewis.

12 The way we would propose to divide up things is I'll
13 respond with respect to the issues that plaintiffs raised in
14 their May 26 letter, and my co-counsel, Jessica Heinz, will
15 address the issues that were raised for the first time
16 yesterday in plaintiffs' submission, which is actually the bulk
17 of what plaintiffs' counsel has argued this morning.

18 I'll start by saying that the meet and confer
19 requirement is an important one and there have been many
20 decisions by this Court recognizing it's important. And the
21 reason we've raised it is because the letter that was sent to
22 Your Honor addressed some discovery issues that had only been
23 raised by plaintiffs' counsel with us four hours before they
24 were mailed to Your Honor. We submit that was not a good-faith
25 effort to try to meet and confer. It's not just a matter of

1 whether or not sanctions should be entered. Obviously, we
2 oppose the sanctions but, more importantly, there is an
3 obligation on all parties, plaintiffs as well as defendants, to
4 try to work through issues. And, unfortunately, what we've
5 seen with increasing frequency from plaintiffs is a tendency
6 with respect to Aurobindo to fire off motions without
7 conferring and we would like to remind plaintiffs and ask the
8 Court to remind plaintiffs of the importance of meeting and
9 conferring.

10 With respect to the issues that were raised by
11 plaintiffs in their May 26 letter, it was largely a repeat of
12 the arguments that Your Honor considered and addressed and
13 rejected in the decision that was issued last week.

14 We will say that, as Your Honor recognized, we've
15 committed to making deponents available to the extent necessary
16 for supplemental depositions on any document productions that
17 occurred late. Obviously, we have been trying to prioritize
18 deposition -- document production for witnesses who are being
19 deposed. So that is not a nefarious purpose, it is a purpose
20 of trying to get the documents to plaintiffs when they need
21 them. And we've offered, in the two instances that plaintiffs'
22 counsel mentioned this morning and we've offered in previous
23 instances, to reschedule depositions when we produced documents
24 close in time to the depositions. Plaintiffs have elected to
25 go forward with those depositions, that is their right, of

1 course, and if they contend that there are deponents for whom
2 they need to do additional questioning, we are willing to work
3 with them on that. The only such deponent they've identified
4 so far is one particular deponent, Blessy Johns, and we are
5 still waiting to hear from plaintiffs when they would like to
6 reschedule that deposition.

7 The only other point I would make, and I didn't hear
8 plaintiffs argue it this morning so I don't know how seriously
9 they're pressing it, is with respect to their new request which
10 they made for the first time in the letter yesterday that there
11 be a requirement to certify that document production is
12 complete. It's contrary to the federal rules. They cited no
13 authority for it. If the Court would entertain it at all, we
14 would like to have an opportunity to brief it.

15 I would just cite two cases for Your Honor that have
16 specifically considered and rejected such a certification
17 requirement: *Moore vs. Publicis Group*, that's at 287 F.R.D.
18 182 (Southern District of New York 2012). And the other one
19 would be *United States vs. Fresenius Medical Care Holdings*,
20 that's at 2014 Westlaw 11517841. That's a decision from the
21 Northern District of Georgia from May 13th, 2014.

22 In both of those cases, courts specifically considered
23 and rejected the idea that there should be a requirement to
24 certify discovery's complete. And notably in the *Moore* case,
25 the Court said what Your Honor has recognized in several of

1 these case management conferences that in large data cases like
2 these, no lawyer using a search method could honestly certify
3 that production is complete.

4 So, again, we didn't hear plaintiffs pressing that
5 this morning so perhaps I'm taking up too much time on an issue
6 that is not one that is ripe.

7 I'll now defer to my co-counsel, Ms. Heinz, on the
8 other issues.

9 MS. HEINZ: Good morning, Your Honor.

10 JUDGE VANASKIE: Good morning.

11 MS. HEINZ: This is Jessica Heinz on behalf of the
12 Aurobindo parties.

13 I just want to briefly address a few things Mrs.
14 Goldenberg raised regarding the ongoing document review and
15 production and the depositions of Palew and Sanjay Singh. And
16 I think my colleague, Ernie Koschineg, is on as well. He may
17 have something to add after I'm through.

18 But to start off, I just want to make clear that the
19 Aurobindo parties have been doing everything that they can to
20 get through -- to get to the plaintiffs everything that they
21 have asked us for.

22 Recently, we had our vendor conduct a sweep of the
23 relativity workspaces to confirm that all data has been
24 processed. They located some additional data. As soon as that
25 happened last week, we let the plaintiffs know and we

1 immediately began reviewing to get that to the plaintiffs as
2 soon as possible.

3 We have since completed -- there's two different
4 workspaces. There's one for the U.S. entities and then there's
5 one for the India entity. And we have completed the U.S. side.
6 Our final production is going to go out -- is going to be
7 prepared this weekend. We anticipate having it to the
8 plaintiffs either over the weekend or early next week.

9 We have committed to -- I'm sorry, I shouldn't say
10 that. We have told the plaintiffs that we have collected
11 everything that we are currently aware of which may be
12 responsive to their discovery requests. We have told them we
13 anticipate completing review and production by June 8th. We
14 informed them of this because, you know, we told them we knew
15 that these documents were -- hadn't been located, we were going
16 to get through them as soon as possible and we knew Mr. Palew's
17 deposition was coming up, so we wrote to them, and it was on
18 May 26, it was actually shortly after we received their letter
19 earlier that day, as well as an email from them, so we wanted
20 to let them know the status of everything and that we would
21 have everything to them as soon as possible.

22 The testing data that Mrs. Goldenberg referred to that
23 was produced I believe it was during Sanjay's deposition, that
24 is actually Empower data. They had had the test results for
25 quite awhile now. Those have been produced, they were

1 previously produced. The Empower data is what counsel for
2 Hetero was talking about earlier, and that is what was produced
3 during Sanjay's deposition. So they did have the results, that
4 was just the underlying data.

5 So that being said, I would like to turn it over to
6 Mr. Koschineg if he has anything to add. I think he's going to
7 address the spreadsheet that was produced shortly before David
8 Palew's deposition.

9 MR. KOSCHINEG: Good morning, Your Honor. This is
10 Ernie Koschineg. Thank you, Your Honor. Good morning.

11 The spreadsheet that Ms. Goldenberg is referring to
12 addressed the downstream API supply to third-party customers.
13 Your Honor, that information, we stopped selling API to outside
14 vendors and customers in May of 2014. That spreadsheet showed
15 only three customers that actually bought the API through 2014.
16 One of the companies sold the product only in Europe. So this
17 -- and this issue of prejudice and potential relevancy I think
18 is really questioned here when Ms. Goldenberg represented they
19 were somehow severely prejudiced by this late production.

20 The chart itself, Your Honor, was very
21 straightforward. It lists three different companies that
22 bought the API and when they bought it and there was really no
23 further discussion on that. It was reviewed by counsel for a
24 few hours at the beginning of the deposition and there was
25 nothing regarding the API with regard to those three customers

1 that was really at issue at the time of the deposition. So to
2 say that anyone was severely prejudiced by the late production
3 I just think is a little misleading.

4 JUDGE VANASKIE: All right. Ms. Goldenberg?

5 MS. GOLDENBERG: Sure, Your Honor. I'll try and take
6 some of that in reverse order just to deal with what's fresh in
7 our minds first.

8 JUDGE VANASKIE: Thanks.

9 MS. GOLDENBERG: The attempts to take each of these
10 document dumps in isolation and minimize the prejudice on
11 plaintiffs misses the larger point. When we are getting
12 multiple documents of sometimes thousands -- well, actually
13 almost all the time -- thousands of documents and in many cases
14 tens of thousands of documents on the eve of deposition, of
15 course we can review one or two of them but we can't get
16 through all of them. And many of these productions, including
17 the data that was produced during Mr. Singh's deposition,
18 wasn't even capable of being loaded by our vendor while the
19 deposition was taking place. And those validation batches that
20 were produced, as well as the Empower data, it does have
21 relevance to our questions. And because I'm not going to
22 disclose our legal strategy over the phone, I'm not going to
23 tell, you know, specifically what that is, but that's
24 information that we asked for, it's information that should
25 have been produced to us and now Aurobindo is attempting to

1 change what we're arguing about. This isn't, oh, they got it
2 in the end and so there's no problem. This information was due
3 back in November and they're dumping it on us in the middle of
4 the deposition that is taking place on that very subject
5 matter. So, you know, I don't think that the characterization
6 of this isn't a big deal is accurate.

7 Beyond that, the approach that Ms. Heinz outlined,
8 which is the Aurobindo parties have been doing everything
9 plaintiffs have asked for, is not how this process is supposed
10 to work. We served Rule 34 discovery requests, they had a
11 deadline to respond to them in November, and now every time
12 we -- well, we're only getting what we've found is missing in
13 the production, which means I don't know what we haven't found.
14 But if Aurobindo's position is we're only going to go get
15 things when plaintiffs discover that they're missing, that is a
16 violation of the discovery process and the manner in which
17 discovery is supposed to take place in this case or any other.

18 And, finally, the requirement -- or our request that
19 they certify that their production is complete is the very
20 least burdensome remedy that plaintiffs could come up with
21 after we've been through months of Aurobindo making delayed
22 productions, quote, unquote, finding documents at the last
23 minute, and all we want to know is at some point when we need
24 to redepose these witnesses, we'd like to know that we have a
25 substantially complete production. And the rules do require

1 that and I don't think that that's too burdensome to ask given
2 everything that we've had to go through.

3 And that's all I have for now. I'm happy to, again,
4 answer questions but I believe Mr. Slater might have wanted to
5 chime in as well.

6 JUDGE VANASKIE: All right.

7 MR. SLATER: If I could, Your Honor, it's Adam Slater.
8 I'm only going to speak for a moment, Your Honor, if I could,
9 and only because I don't want Ms. Goldenberg's professionalism
10 and politeness and the plaintiffs collectively don't want that
11 to be -- which I -- which is commendable in what she's been
12 facing, to mask the outrage and the frustration.

13 I've been watching these arguments for a long time and
14 Ms. Goldenberg's done an unbelievable job handling a very
15 difficult situation, but I want to just comment on one thing.
16 What I didn't hear from Aurobindo's counsel while they were
17 pushing back and what-abouting the plaintiffs, which was
18 incredible to me, I don't think we've ever heard them actually
19 say today, you're right, we shouldn't be dumping massive
20 amounts of documents on the plaintiffs that were due last
21 November on them during depositions, right before or right
22 after depositions, continuing this massive rollout. I have not
23 heard one time these Aurobindo lawyers have actually accepted
24 responsibility for what they're doing as being violating the
25 Court orders, violating rules and violating everything they're

1 supposed to be doing in this litigation, and doing what they've
2 told the Court they were going to do and being straightforward
3 and transparent with the Court. And that's our biggest concern
4 is at this point if there's not some significant stinging
5 sanction against them, they're going to continue to come on
6 these calls, push back and they're going to keep doing this and
7 it's going to be a signal not only to them but every other
8 defendant in this litigation that if they don't produce
9 important documents that they can get away with it. And I know
10 that's not how you see it and I know that's not how we see it
11 but we feel a strong signal to Aurobindo is now warranted to
12 let them and the other defendants know that this is
13 unacceptable.

14 Thank you.

15 MR. LAVELLE: Your Honor, may I respond briefly? This
16 is John Lavelle from Morgan Lewis.

17 JUDGE VANASKIE: You may.

18 MR. LAVELLE: Your Honor, I will point out that Your
19 Honor gave plaintiffs an opportunity to submit a complete
20 written motion for sanctions. It was a very serious matter, as
21 Your Honor stated at the case management conference, and
22 merited serious consideration. So plaintiffs had a full and
23 fair opportunity to raise many issues, they did so, we had an
24 opportunity to brief them, Your Honor considered them, and Your
25 Honor ruled on the motion for sanctions.

1 What I'm hearing today from plaintiffs' counsel is
2 piling on in an attempt to get Your Honor to reconsider Your
3 Honor's carefully considered decision.

4 The issues that were raised this morning I think are
5 relatively straightforward on how to deal with them and it's
6 the same process that Your Honor described in Your Honor's
7 ruling, which is, where there's been document production that
8 has been close in time to a deposition, Aurobindo should be and
9 has, in fact, offered to make deponents available again at a
10 later time for a supplemental deposition, and we remain open to
11 doing that and we will do that. And we have done exhaustive
12 work here to try to address the issues that have been raised by
13 plaintiffs and to comply with our discovery obligations.

14 I think I'll leave it at that point. Thank you.

15 JUDGE VANASKIE: Let me just repeat that I continue to
16 be frustrated by Aurobindo's conduct in this matter. I denied
17 the motion without prejudice. One of the reasons I denied the
18 motion is because my authority is limited to issuing a sanction
19 that's no greater than necessary to cure the harm that has been
20 caused and re-deposition of witnesses is helpful in that
21 respect. I haven't received a request for monetary sanctions
22 but I'd certainly be willing to consider that to the extent
23 that Aurobindo's conduct has caused unnecessary expense on the
24 part of the plaintiffs. When I heard argument on this matter,
25 Ms. Goldenberg indicated to me that they're not interested in

1 monetary sanctions that enable a party to simply pay money for
2 discovery failings. This is -- it's been frustrating, you
3 know, and I can just imagine what it's like to get a document
4 dump on the eve of or in the middle of a deposition.

5 You've cited to me some cases, Mr. Lavelle, one which
6 I think is probably from Judge Peck, but I'm not sure,
7 certainly a respected discovery expert, the *Moore* case, dealing
8 with substantial -- certification of completion of discovery.

9 Now, what Ms. Goldenberg has asked for is a
10 certification that it's substantially complete. It seems to me
11 that by this stage you should be able to make that
12 certification that your production is substantially complete,
13 yet you're reluctant to do that. That is a cause of concern.

14 I haven't closed the door on sanctions against
15 Aurobindo. I was careful to make it clear that I was leaving
16 that door open. I'm looking for a more concrete showing of
17 prejudice by the plaintiffs or a request for a sanction that
18 would match the prejudice. I'm not sure striking defenses is
19 that sanction yet but, you know, we're not seeing this problem
20 with other manufacturer defendants, unless I'm missing
21 something, and I've still got a couple more to go through. But
22 by now I don't think there should be any more document dumps,
23 last-minute document dumps. If there are going to be, you have
24 to make a production, I'm going to want to know why and I've
25 indicated this as well in the decision.

1 I'm considering ordering a hearing on sanctions
2 against Aurobindo under my authority to do so. I just want to
3 understand -- underscore how serious this matter is. Maybe you
4 don't think I feel that way but I do. And I'll have to be a
5 little more articulate in the opinions I issue if the message
6 is not getting through.

7 I was very disappointed to receive -- to see the
8 letter after I had sent it to docketing, the order I issued;
9 not to say the order would have been any different but I just
10 expect more than I am getting so far.

11 So I hope you understand this is a serious warning and
12 I'm considering taking action that would underscore the
13 seriousness of the situation.

14 MR. LAVELLE: Your Honor, we hear you and we
15 understand this is a very serious matter and my comments were
16 not intended to suggest in any way that we did not take this
17 seriously and we are endeavoring to complete the document
18 production of the last few items that Ms. Heinz described.
19 Hopefully that will at least take care of that issue. And we
20 do indeed recognize the seriousness of this and hopefully we
21 are at the end of this chapter of the issues and we can move
22 forward.

23 Thank you.

24 JUDGE VANASKIE: All right. That will conclude our
25 discussion for now on Aurobindo.

1 I'm going to get back to the defendants' agenda
2 letter. I went out of order a little bit.

3 My understanding -- I'm going to Mylan now. My
4 understanding is that there are no outstanding issues at the
5 present time with respect to Mylan, and that depositions of
6 Mylan witnesses are expected to be completed by the end of
7 June.

8 Who's speaking on behalf of Mylan? Anyone?

9 MR. HONIK: Your Honor, this is Ruben Honik. I'll
10 speak up because I've been working on Mylan.

11 You're correct, we have four remaining depositions in
12 June. Two of them I think are still under a little bit of a
13 cloud because they are India national witnesses, there are some
14 potential issues there; but as we speak today, they're
15 scheduled and we're hopeful that they'll be completed by the
16 end of the month.

17 JUDGE VANASKIE: Thank you.

18 MR. TRISCHLER: Your Honor? I'm sorry, Your Honor,
19 this is Clem Trischler. And Ruben, thank you for speaking up.
20 Even though it's been a year and a half into this pandemic,
21 sometimes I still can't figure out how to find the mute button
22 to unmute myself.

23 To answer the Court's question, I concur. I think
24 we're working cooperatively and we'll get the remaining
25 depositions completed soon.

1 JUDGE VANASKIE: That's great. Thanks.

2 Now I am at the bottom of Page 3 of the defendants'
3 agenda letter dealing with Teva.

4 As I understand it, there's concerns with respect to
5 Teva's privilege log but there's no issues with respect to Teva
6 depositions or depositions of Teva witnesses. Is that correct?
7 Who's speaking on behalf of Teva?

8 MS. LOCKARD: Yes, Your Honor, it's Victoria Lockard
9 on behalf of Teva.

10 That's my understanding on the privilege log issues.
11 We did submit a letter to counsel yesterday evening after the
12 submission letters were exchanged. We did downgrade some of
13 our privilege documents at that point. So we have invited to
14 meet and confer on this process. So I believe both letters
15 indicated there was really nothing for the Court to decide on
16 the privilege log. We will continue to work together on that
17 issue.

18 On the depositions, I don't believe there are any
19 issues there to be decided by the Court. We have two
20 outstanding witnesses who need to be deposed and for COVID
21 international reasons we have not been able to accomplish their
22 depositions but we are trying daily to try to work around the
23 COVID restrictions and quarantine rules and get the
24 international paperwork to try to get both of these witnesses
25 scheduled, and I believe we're in agreement with plaintiffs'

1 counsel in terms of getting those underway but I don't think
2 there are any disputes there.

3 JUDGE VANASKIE: Okay. Thank you. Thank you, Ms.
4 Lockard.

5 The next issue I have then deals with Torrent and I
6 don't think there are any issues with respect to Torrent. Is
7 that correct? Who's speaking on behalf of Torrent?

8 MR. BRANCATO: Good morning, Your Honor. This is
9 Alexia Brancato for Torrent. And you are correct, there are no
10 issues that I am aware of for us.

11 JUDGE VANASKIE: Any disagreement on the plaintiffs'
12 side?

13 (No response.)

14 JUDGE VANASKIE: Hearing none, we will move on to the
15 depositions of current putative class representatives.

16 MR. GOLDBERG: Your Honor?

17 JUDGE VANASKIE: Yes.

18 MR. GOLDBERG: Your Honor, this is Seth Goldberg. May
19 I just interrupt to ask that whoever is typing, if everyone
20 could just put their phone on mute, it is a little bit hard to
21 hear, Your Honor.

22 JUDGE VANASKIE: You certainly may.

23 If anybody is taking notes with your keyboard, please
24 mute your phone.

25 All right. We're going to talk about the current

1 putative class representative depositions. And who's
2 addressing this issue on behalf of the defendants?

3 MS. BAZAN: Good morning, Your Honor. This is Rebecca
4 Bazan on behalf of the defendants.

5 JUDGE VANASKIE: All right. Where does this stand
6 right now?

7 MS. BAZAN: I will try to make this very short.

8 As you can tell from our submissions, generally the
9 parties have worked very well together to complete almost all
10 of the class -- current putative class representative
11 depositions. We noted a few sort of ongoing cleanup issues in
12 our letter. After we filed our letter, I was informed that
13 counsel for MSPRC did reach out to counsel for defendants to
14 start engaging on those issues. So while our letter requested
15 relief from the Court, we think that now those discussions will
16 be underway and so hopefully those issues will be resolved
17 without Court intervention.

18 So the only thing that we are asking the Court for
19 help with today is scheduling the second half of the deposition
20 of Ms. Powell, whose deposition started but had to be suspended
21 due to Internet connectivity issues. So we would just like to
22 move that along and request that the Court order that
23 plaintiffs provide possible dates between now and June 30th so
24 that this deposition can hopefully be completed within the
25 month.

1 JUDGE VANASKIE: Is there any problem from the
2 plaintiffs with respect to that occurring? Who will be
3 speaking --

4 MS. WHITELEY: Your Honor, this is -- Your Honor, this
5 is Conlee Whiteley on behalf of the plaintiffs.

6 The plaintiffs will provide a date before June 30th.

7 JUDGE VANASKIE: All right. If you're not able to
8 agree on a date, send me letters, each side, and we'll order a
9 date, but we'll get this completed by June 30th.

10 Is that all we need to discuss with respect to these
11 current putative class representative depositions?

12 MS. WHITELEY: Your Honor, this is Conlee Whiteley
13 again. This might be the time to discuss the other putative
14 class representative depositions. It's in our agenda letter
15 but not in the defendants' in this section. Do you prefer that
16 or do you want to wait until the end?

17 JUDGE VANASKIE: No. Let's take it up now. Let's
18 take it up now.

19 MS. WHITELEY: Okay.

20 JUDGE VANASKIE: Can you point me to where it is in
21 your agenda letter?

22 MS. WHITELEY: In our agenda letter, it is on Page 12.

23 JUDGE VANASKIE: All right. Okay, this is the
24 third-party payors.

25 MS. WHITELEY: Yes, sir. So we have -- I'm not sure

1 if you've been made aware of this, it hasn't been discussed
2 much during the conferences, but there was a complaint that was
3 filed on behalf of Employers and Laborers Local 100 and 397 and
4 Steamfitters Local 439. They are third-party payor putative
5 class representatives and have alleged class allegations
6 against many of the defendants, including retailers. Their
7 claims are very similar to those in the complaints that were
8 filed on behalf of the class -- the economic class
9 representatives, including the third-party payors, but there
10 are some differences.

11 They began -- they were a little behind because they
12 filed later in the litigation, they were transferred into the
13 MDL. They began filling out their fact sheets and producing
14 documents and recently I believe that we are in agreement with
15 the defendants who were assigned to this particular -- these
16 plaintiffs that we are substantially complete in our production
17 and any deficiencies have been corrected in the fact sheets.

18 Reviewing the status of this as it was coming to my
19 attention, I reached out to those defense counsel along with
20 Mr. Goldberg and asked if the defendants intended to take their
21 deposition. We met and conferred about it. We told them that,
22 you know, if they wanted to do it the second phase, that made
23 perfect sense, given the timing. Mr. Goldberg wanted to speak
24 to the other defense counsel. He got back to me this week and
25 he said that their position is these defendants [sic] are not

1 putative class representatives in the -- in the current
2 complaint or the proposed amended complaint and until or unless
3 they are added to that complaint, there is no need to take
4 their deposition.

5 We wanted to bring this to the Court's attention just
6 because -- you know, before time gets away with us. There had
7 not been a decision made as to whether they should be added to
8 the amended complaint that is currently before the Court and
9 how that -- if they were, how that might impact the briefing.
10 And we just wanted to raise this with Your Honor to get
11 feedback from the Court as to what the Court envisions in this
12 regard and whether the Court would prefer they be added; and if
13 so, what affect that might have on any of the other related
14 issues, including the briefing of the motion to dismiss.

15 JUDGE VANASKIE: Well, what is the plaintiffs' view in
16 terms of whether they should be added to the proposed amended
17 complaint?

18 MS. WHITELEY: Well, part of the issue here and the
19 reason that they were not included is because some of the
20 claims are different and we believe that the amended complaint
21 that's currently pending before the Court with our request for
22 leave to amend are the issues that those class representatives
23 are putting forward. Because these are somewhat different,
24 there hasn't been a decision made as to whether it would be
25 best to include them in the amended complaint.

1 If Your Honor requests that we inform the Court
2 promptly on our decision, we can do so; but before we did so,
3 we wanted to determine whether the Court had a preference or
4 any specific guidance in that regard.

5 JUDGE VANASKIE: Well, I can only give you my reaction
6 and that is, it is not a matter for the Court or for the
7 Special Master to decide whether they should be added to the
8 class representatives or not. That seems to me to be a call
9 for the plaintiffs to make; and once they make it, we react
10 accordingly in terms of whether they're proper class
11 representatives or not. I don't think we can make that
12 determination.

13 MS. WHITELEY: I absolutely agree with you, Your
14 Honor, certainly as to whether they're proper class
15 representatives; but as to timing and whether -- you know, if
16 the Court had any preference on the timing, whether it should
17 be -- if the plaintiffs were to so move, whether the Court
18 would prefer that now or after there are decisions on the
19 motions to amend or whether the Court would prefer it remain
20 the same until further notice.

21 JUDGE VANASKIE: I'm hesitating only because I am not
22 sure this is within the scope of my authority --

23 MS. WHITELEY: Okay.

24 JUDGE VANASKIE: -- as a Special Master.

25 MS. WHITELEY: I understand. And we somewhat

1 anticipated that as well and I -- I'm sorry for putting you on
2 the spot. And so I think that what we should do is make a
3 proposal to the Court in short order and then at that point you
4 can decide whether you are free to make the decision on this or
5 whether it should be Judge Kugler; but I imagine that mainly
6 it's a matter of timing and the procedural management of
7 issues, which are -- I believe they're certainly within the
8 scope of your authority but you cannot make those decisions
9 until we present a clearer path for you, which we will do
10 promptly.

11 JUDGE VANASKIE: Okay. Good. That will help. And
12 then we can address the question of the timing of depositions.

13 I'm sorry, somebody else wanted to be heard.

14 MR. FELDMAN: Yes, Your Honor. This is Ethan Feldman.
15 I'd like to briefly respond to that, if I may.

16 JUDGE VANASKIE: Certainly.

17 MR. FELDMAN: It seems like the issue is sort of
18 working itself out now that we are on the phone talking about
19 it here with Your Honor.

20 I would just like to point out that these entities
21 that Ms. Whiteley referenced have been around for a long time
22 here, they've been known about, and the plaintiffs recently
23 filed their motion for leave to amend their master complaints
24 and these entities aren't named in the proposed amended master
25 complaint.

1 It just seems a little bit premature here to require
2 any depositions of these entities prior to them being named as
3 putative class representatives.

4 I just -- also, as Your Honor pointed out, you know,
5 it's not something that the defendants have been sitting on
6 here. Your opening remarks today pointed out that we've
7 undertaken a lot of action here to get things moving and to do
8 our best to comply with the scheduling orders that were
9 proposed by the Court. Specifically, Case Management Order 23
10 doesn't really contemplate the discovery of non-named putative
11 class representatives here.

12 After -- after hearing Ms. Whiteley speak, it seems
13 like this issue is getting resolved in short order but until --
14 you know, until these two entities are named as class
15 representatives in the -- in a complaint, it just seems like
16 discovery is premature and forcing defendants to undertake any
17 additional discovery on these entities is -- it's just not
18 authorized by any scheduling order here.

19 MS. WHITELEY: Your Honor, this is Conlee Whiteley
20 again, if I may.

21 We have not had a chance to have a second meet and
22 confer on this issue because of the Jun Du depositions. Mr.
23 Goldberg was able to get back to me with his response but we
24 haven't had a chance to have a discussion. But I agree with
25 Mr. Feldman that this is something that can be worked out. And

1 what we did discuss on the very first meet and confer was that
2 there is plenty of time for this deposition to be taken if and
3 when it is needed. And so that we've already agreed that
4 that's not an issue at all. And so we'll just work it out and
5 then report back to Your Honor.

6 I did not want to let another CMC go by without
7 bringing it to the Court's attention and because they are in
8 sort of a situation where they're completing fact sheets and
9 the other depositions were going on, I felt it behoved me to
10 raise this with defense counsel to get their position and then
11 ultimately bring it before the Court.

12 JUDGE VANASKIE: Okay. I think it was appropriate for
13 you to raise it now, Ms. Whiteley, and it has received our
14 attention. We'll await whatever action you take in terms of
15 making these two entities putative class representatives and
16 await information from you and Mr. Goldberg with respect to
17 scheduling of depositions if that's necessary. But right now
18 there's no action to be taken on this matter.

19 We'll move to the next item on the agenda, which is
20 the depositions of personal injury bellwether plaintiffs
21 addressed at Pages 7 and 8 of defendants' agenda letter. It
22 seems to me there is no action needed on this point as well.
23 Is that correct?

24 MS. LOCKARD: Your Honor, this is Victoria Lockard for
25 Teva. And you're exactly right. I don't believe there is any

1 action. We just want to let the Court know because the
2 scheduling order itself states that the parties are to take ten
3 of the bellwether plaintiff depositions by June 1st, and
4 despite best efforts I think of all parties, that's not going
5 to happen. So we have a few that will linger into June but we
6 do and are making progress on scheduling those and we don't see
7 any difficulty in completing all 28 bellwether plaintiff
8 depositions by the later deadline ordered by the Court. So I
9 don't think there's a dispute.

10 JUDGE VANASKIE: Okay. Very well.

11 Do plaintiffs agree?

12 MS. LOCKARD: Your Honor, I know Daniel Nigh for the
13 plaintiffs has really been leading this group for their side.
14 He was engaged in depositions today, so I don't mean to speak
15 for anybody but that may be why you're getting silence on their
16 end.

17 JUDGE VANASKIE: And I understand that, too. The
18 point is there is nothing to be resolved right now.

19 I'll move to the next issue in the defendants' agenda
20 letter, and these are defendant-specific discovery issues
21 interspersed with the plaintiffs' motion to compel documents
22 withheld on the basis of the Chinese state secrecy laws and the
23 ZHP party have now moved to strike certain arguments from the
24 reply brief or, in the alternative, to treat the brief in
25 support of the motion to strike as their sur-reply brief to

1 respond to those arguments dealing with the *Aerospatiale* and
2 *Richmark Corporation* cases, and I have decided that the motion
3 to strike will be denied but the alternative request to treat
4 their brief as a sur-reply brief will be granted so that the
5 arguments of defendants in response to the plaintiffs' reply
6 brief will be considered, and I'll issue an order to that
7 effect.

8 The next issue that I have appears at Page 9 of the
9 defense agenda letter, and this deals with the status report of
10 the ZHP parties regarding plaintiffs' new discovery requests.
11 And it seems to me substantial progress has been made on this
12 point.

13 Who will be addressing this matter on behalf of ZHP?

14 MS. PRISELAC: Your Honor, this is Jessica Priselac of
15 Duane Morris for the ZHP parties.

16 JUDGE VANASKIE: All right.

17 MS. PRISELAC: Thank you, Your Honor.

18 Just briefly, as we've laid out in our submission, we
19 have made substantial progress in meeting these new discovery
20 requests. We've produced over 4,000 documents so far. We will
21 be making an additional hard-copy document production later
22 today. We anticipate an additional electronic document
23 production on Monday. And we believe that we will be able to
24 substantially complete the production by June 11th, which we
25 understand is past the Court's initial deadline of June 4th but

1 we have really made substantial progress and have been working
2 tirelessly to meet the deadline but because of the logistics
3 involved, we don't believe we'll be able to complete every --
4 or we won't be able to substantially complete the production
5 until June 11.

6 JUDGE VANASKIE: All right. And who will be
7 addressing this matter on behalf of plaintiffs?

8 MR. SLATER: Adam Slater, Your Honor.

9 JUDGE VANASKIE: All right, Mr. Slater.

10 MR. SLATER: Thank you, Your Honor.

11 I certainly anticipate and understand Your Honor will
12 be inclined to grant the extension of June 11 so I'm not going
13 to argue against that extension, but I would like to make very
14 clear for when we get to June 11 and there continue to be gaps,
15 it is our position that there has not been substantial progress
16 in the productions, and I'll give a couple of examples to Your
17 Honor.

18 A production was apparently made this morning, and
19 we're trying to look at it right now, of 168 documents from
20 some of the custodial files. We have none of the custodial
21 files yet produced, as far as we know, in completion. And Your
22 Honor, on May 12th, said you expected that there would be a
23 substantial progress in this production, I think that the
24 letter from ZHP exaggerates, to a large extent, what they've
25 done.

1 I'll give you a couple of other examples.

2 They say that a state secret review was done before
3 the documents were sent for privilege, relevancy and
4 responsiveness review, I guess were the three, I think I have
5 it right, but are they holding back documents? Are we now
6 triggering another round of state secret issues? I think that
7 if they're going to make a substantial production, they need to
8 be transparent with those things and not wait 30 more days to
9 produce logs. I think they should try to move more quickly.

10 I'll give you some other examples.

11 There's a report that we specifically pointed out was
12 very important, we explained why, and from all indications, the
13 report is gone. There's no reason why ZHP couldn't confirm
14 that by today, that the -- that that report either has been
15 found and here it is or we can't find it, it's gone. And the
16 same with the canvassed laptops and phones. These are easy
17 disclosures to make and easy information to get us and we would
18 have hoped, based on the discussion about prioritization at the
19 last conference, that that would have been something that would
20 have been provided to us right up front. It should be easy to
21 get to us.

22 Again, I'm not arguing against the extension but the
23 last point is this: Counsel didn't say they're going to make
24 complete production. It's substantial completion. This is
25 discovery that should have been produced, for the most part,

1 last November.

2 And I'll say another thing. Jinsheng Lin, who is the
3 person who authored the email wherein ZHP acknowledged -- or
4 where he acknowledged and stated to ten people or so in the
5 company, including the heads of some major departments,
6 including regulatory affairs, that there was NDMA in valsartan
7 in July of 2017. Why was that individual not identified by ZHP
8 as a custodian two years ago or whenever we were identifying
9 the custodians?

10 So I'm making a record, Your Honor, that we are not
11 satisfied with the substantial progress because we think that
12 the letter, it reads that way but if you look at the
13 nitty-gritty, it's not substantially complete or there hasn't
14 been substantial progress. And I just want to, again,
15 foreshadow that when June 11 comes, there's going to be big
16 gaps and we're going to be back in this place. But, you know,
17 we'll have to wait and see. But we think the production should
18 be completed June 11, not we did the best we could but we're
19 still working on it.

20 Thank you.

21 JUDGE VANASKIE: Thank you. Yes, I am hopeful that --

22 MS. PRISELAC: Your Honor --

23 JUDGE VANASKIE: Go ahead, Ms. Priselac.

24 MS. PRISELAC: Just to correct the record, these are
25 new document requests. These are -- primarily involve a drug

1 that is not the subject of discovery, irbesartan. So the idea
2 that these things should have been produced in November is just
3 not true.

4 Secondly, we have made substantial progress and to the
5 extent that Mr. Slater wants to prioritize certain things, the
6 plaintiffs have not even once reached out to us to say what
7 they would want first. So if that was such an important thing
8 to them, they could have told us; they chose not to.

9 The third thing is that I -- we did offer to make
10 certain representations to plaintiffs about these laptops and
11 other issues. They told us they didn't want them, that they
12 wanted a full collection of documents and to go to the IT head
13 of ZHP and try to find if there were any realtime emails about
14 these laptops, not just some kind of description of what
15 happened to them. So that's what we're doing.

16 So for Mr. Slater to get on the phone now and say that
17 we should have done something that we offered and he
18 specifically rejected is just improper.

19 JUDGE VANASKIE: Mr. Slater?

20 MR. SLATER: Yes, Your Honor. I -- not to get into a
21 back and forth but I didn't change anything. What I was saying
22 a few moments ago is we would have thought that those parts of
23 the productions would have been completed because they were
24 discrete matters that came up as a result of the depositions.
25 That was my only point.

1 As far as whether things should have been produced in
2 November, we're not arguing that right now, but we take the
3 position that, as I said, most of these items should have been
4 produced at that time. I don't think Your Honor wants to hear
5 more on that.

6 JUDGE VANASKIE: No, we're not going to go back and
7 make a determination of what should have been produced earlier.
8 The point is we're moving forward now.

9 ZHP will have until June 11 to have substantial
10 completion of the production. I'm hoping it is complete but
11 you continue to move forward, at least to have production on
12 the matters that you've covered in your remarks just now, Mr.
13 Slater, that that should be done by then. And we'll address
14 any shortcomings, if there are any, after June 11. All right?

15 MS. PRISELAC: Thank you, Your Honor.

16 JUDGE VANASKIE: We've already talked about the Chen
17 custodial file and, as I said, I'll issue a decision on that
18 early next week.

19 The next item I have on the agenda at Page 11 of the
20 defense agenda letter, and this is ZHP parties' motion to
21 strike plaintiffs' motion for sanctions dealing with the
22 depositions.

23 Who will be addressing this issue on behalf of ZHP?

24 MR. GOLDBERG: Your Honor, this is Seth Goldberg.

25 JUDGE VANASKIE: All right, Mr. Goldberg.

1 MR. GOLDBERG: Your Honor, plaintiffs filed -- I'm
2 sorry.

3 JUDGE VANASKIE: Is there anything beyond what
4 you've --

5 MR. GOLDBERG: I'm sorry, Judge, you're cutting in and
6 out.

7 JUDGE VANASKIE: Yes, I'm sorry about that.
8 Is there anything that you wanted to address beyond
9 what you've said in the letter brief -- in the agenda letter?

10 MR. GOLDBERG: I'm sorry, Your Honor, you are cutting
11 in and out.

12 JUDGE VANASKIE: Okay. Let me try it this way. Can
13 you hear me better now?

14 MR. GOLDBERG: Yes.

15 JUDGE VANASKIE: No? Okay.

16 MR. GOLDBERG: Yes.

17 JUDGE VANASKIE: I am taking it off speaker.

18 MR. GOLDBERG: No, Your Honor, I think we can hear
19 you. We can hear you better now, Your Honor.

20 JUDGE VANASKIE: All right. Is there anything you
21 wanted to address beyond what you've written in Pages 11 to 13
22 of the agenda letter on this question of striking the motion
23 for sanctions?

24 MR. GOLDBERG: Your Honor, the one thing that I think
25 is really important is what plaintiffs are attempting to do

1 with the motion for sanctions because I think it is why the
2 motion should be stricken, and that is that the motion is based
3 on specific answers to questions posed to five different
4 witnesses. Plaintiffs had not met and conferred about any of
5 the answers to any of those questions. And even as Your Honor
6 noted in the portion of the transcript that plaintiffs cited in
7 their letter yesterday, well, there may be answers to questions
8 that could warrant a sanction and plaintiffs could eventually
9 file a motion as to that, it has to be addressed on a
10 question-by-question -- or, sorry, answer-by-answer basis and
11 we think plaintiffs have to meet and confer on each of those
12 answers because each one needs to be evaluated by the Court
13 separately and independently to determine whether any
14 particular answer should be deemed admitted. And plaintiffs
15 have not done that with respect to the testimony which is the
16 basis of their motion. But I think more importantly is the
17 point in plaintiffs' motion that they intend to extrapolate
18 from whatever rulings Your Honor makes about those particular
19 questions to answers provided by any of the other 12 ZHP party
20 witnesses that testify without meeting and conferring as to any
21 particular answer that any of those witnesses have provided.

22 This Court has consistently enforced the
23 meet-and-confer rule; and with meaningful effect, the parties
24 have been able to reach agreement on virtually all of the
25 disputes or narrow issues for the Court throughout this

1 litigation. And with respect to this very significant request
2 by plaintiffs that answers be deemed admitted, they should be
3 required to meet and confer on those particular answers to
4 determine whether there can be any resolution that doesn't
5 require the Court's intervention. That's what the rules
6 require and this Court has consistently enforced that rule.

7 JUDGE VANASKIE: All right. Is Mr. Slater addressing
8 this issue?

9 MR. SLATER: Yes, Your Honor.

10 JUDGE VANASKIE: Go ahead.

11 MR. SLATER: Thank you, Your Honor.

12 One thing I'll make very clear, and I'm sure Your
13 Honor got it, is we filed this motion and stated in at least
14 two places that our intention was once we obtained an order
15 from Your Honor to then go to the defendants and say, look,
16 these are the rules that were made and then present the other
17 parts of the deposition that we think would fall within Your
18 Honor's order and ask the defendants to agree to the relief
19 that we would otherwise have sought by a motion so that we can
20 avoid having to file serial motions on 17 depositions. So I
21 think that what Mr. Goldberg is saying he wants us to do is
22 what we explicitly said in the motion we were going to do.

23 What I didn't hear from Mr. Goldberg was what are we
24 supposed to meet and confer about? We obviously know the
25 record that's been made in this case and what was stated during

1 those hearings with Your Honor. What I'm hearing is that they
2 want to go into what I'm going to characterize as trench
3 warfare over every deposition question. They think that they
4 should be able to, and this is, again, from our perspective,
5 obstruct questioning, have witnesses blatantly fail to respond
6 in a responsive way, and then they want us to have to go to
7 them and say, well, can you -- can you retract what you said
8 and can we change the answers now so we don't have to file a
9 motion.

10 I think Your Honor recognized very clearly in the
11 hearings, and we've supplied the transcript, once the
12 deposition's over, with the guidance that you've given us at
13 this point, the next move is come to Your Honor with a motion
14 for sanctions, which we tried to do in a very surgical way to
15 pick examples from, I think we picked five depositions and gave
16 what we thought were good representative examples that could
17 then be used to cross the rest of the testimony. So I think
18 we've done everything that we possibly could do to make this as
19 streamlined and efficient as possible on a situation that we
20 shouldn't have been put into in the first place.

21 And, again, counsel says they want to meet and confer.
22 Your Honor has now the email that they didn't disclose to you
23 when they filed their agenda on this point yesterday where we
24 wrote to them on Tuesday and said, you know, we read your
25 motion. What is it that you're saying you're going to meet and

1 confer on? Please tell us right now, are you agreeable to
2 these sanctions? Are you agreeable to striking your own
3 objections and striking the answers and deeming these answers
4 admitted? And of course there's no response to that. And Your
5 Honor can imagine what that meet and confer would go like, you
6 know, the meet and confer where ZHP's going to agree to be
7 sanctioned. That's farfetched.

8 So, as we stated in our letter, if Your Honor wants us
9 to file a certification to the effect that this is the record
10 in the case and we've written to them, we can do that; but our
11 understanding was we had gone beyond that on the multiple
12 37(a)(1) where we already had a hearing with Your Honor and you
13 had given us leave to file these motions.

14 Thank you.

15 JUDGE VANASKIE: All right. Mr. Goldberg? Anything
16 else on this issue, Mr. Goldberg?

17 MR. GOLDBERG: I'm sorry, Your Honor, I was on mute.

18 Yes, I do, Your Honor.

19 Plaintiffs have not done everything they needed to do.
20 They are required to meet and confer with us on the specific
21 answers because the Court has to evaluate each answer and there
22 are -- there are a number of variables at issue with respect to
23 each answer.

24 As the Court knows, these were Chinese witnesses who
25 were being deposed with an interpreter. Many of the questions,

1 as the Court has already acknowledged, were objectionable for
2 many different reasons. There were lots of discrepancies and
3 variables that were affecting testimony and each answer needs
4 to be evaluated in that context. And the parties do have to
5 meet and confer, not just about the specific snippets that
6 plaintiffs included in their brief but the entire line of
7 questioning that both came before and after those specific
8 snippets. These kinds of issues do need to be discussed.

9 Yes, ZHP is not going to agree to be sanctioned but as
10 to a number of the things that plaintiff has raised, it is the
11 parties' obligation to meet and confer and determine whether
12 any of those warrant resolution by the Court. Plaintiffs have
13 a duty not to file a frivolous motion. And some of the
14 snippets in their brief may turn out to have been frivolous,
15 but we can only determine that after we meet and confer about
16 them.

17 This is a rule that if Your Honor doesn't enforce,
18 especially in this kind of context where there's not just five
19 depositions but 17 depositions, and plaintiffs could
20 potentially try to extrapolate those rulings to the testimony
21 of witnesses for other parties, that a meet and confer and a
22 serious meet and confer is especially important or the Court
23 will be swamped with making rulings about facts in this case,
24 and that is not really the position of the Court to deem what
25 facts should be admitted or not.

1 So, you know, plaintiffs consistently, as Mr. Slater
2 put it before, foreshadow that there's going to be a deficiency
3 in a production, that a meet and confer is doomed, and
4 plaintiffs need to be held to task. Plaintiffs need to be
5 directed to take their meet and confer obligation seriously, to
6 get reasonable and to act in good faith. They can't just
7 preordain that something is going to be doom, that something is
8 insufficient and sway the Court to somehow perceive that there
9 are some problems on the part of defendants.

10 The defendants, especially ZHP, has demonstrated by
11 the completion of 17 depositions with witnesses who traveled,
12 and the only party with witnesses who traveled out of the
13 country for those depositions, have consistently met their
14 obligations in good faith to produce discovery and to be
15 forthcoming. There is nothing in these depositions that
16 suggest otherwise when you consider the context in which each
17 answer happened, questions that were objectionable, witnesses
18 who could not understand them, and those issues need to be
19 resolved, not by the Court but by the parties; and only if
20 there are issues that cannot be agreed to should the Court step
21 in and then there should be the right context for what the
22 Court is evaluating and what the appropriate relief should be.

23 JUDGE VANASKIE: All right. Mr. Slater, anything
24 else?

25 MR. SLATER: I will just say, Mr. Goldberg just spoke

1 for a while. All I got from that was two things: One, they
2 want to initiate a meet-and-confer process that would take
3 months, would trigger massive correspondence and would -- I'm
4 not saying it's doomed because I don't agree that meet and
5 confers can sometimes work, but in his own words, ZHP is not
6 going to agree to be sanctioned. That's the relief we think is
7 appropriate. It's now a teed-up issue on a substantive basis.
8 That's what's here now and ready for the Court.

9 And the other thing I'll say is Mr. Goldberg's making
10 it sound as if we sat on our hands and then sprung this motion
11 on them. Your Honor, after the first night of Peng Dong's
12 deposition on a Sunday night, I think I submitted a brief to
13 Your Honor at almost 2:00 in the morning that we wrote
14 literally while the deposition was being taken, and then after
15 it was submitted to Your Honor, had a hearing the next day
16 during the daytime and then I emailed Your Honor while I was
17 deposing Peng Dong the night of March 29th I believe it was,
18 the Monday night, another letter with -- and texted Your Honor
19 and provided you the first hour of testimony and we had another
20 hearing that night. So this issue has been heavily argued.
21 And then, of course, we argued it that Wednesday at the main
22 conference, so...

23 What you've heard from ZHP is they want to turn this
24 into, and I say it again, trench warfare. The depositions have
25 been taken, the objections have been placed, Your Honor told us

1 to file a sanction motion, it's teed up on a substantive basis
2 and we ask that the motion to strike be denied and that this
3 roll out to Your Honor for a decision.

4 Thank you.

5 MR. GOLDBERG: Your Honor, may I?

6 JUDGE VANASKIE: Yes, you may, Mr. Goldberg.

7 MR. GOLDBERG: Your Honor, this is not trench warfare.
8 This is simply the application of the federal rules to meet and
9 confer about any answer in which plaintiffs are going to
10 request that there be a sanction, and if that takes a day or a
11 week or two weeks, it takes whatever the rules require, but ZHP
12 parties cannot be subject to a blanket sanction. In other
13 words, the Court cannot sanction plaintiffs -- cannot sanction
14 ZHP in a blanket way based on one witness' answer. The Court
15 can't apply that kind of a sanction to other witnesses'
16 answers. The Court did not address any specific testimony in
17 the March 29th and April 1st hearing. The Court did not rule
18 that any particular answer was sanctionable. The Court did not
19 authorize plaintiffs to file a motion for sanctions then nor
20 did the Court excuse plaintiffs from meeting and conferring
21 about any specific testimony.

22 This is the requirement. Plaintiffs have to, have to
23 be reasonable, they have to meet in good faith, they have to
24 identify the specific portions of testimony that they think
25 warrant the extraordinary relief of a sanction, and there has

1 to be a meet and confer to determine whether that specific
2 answer should be raised with the Court.

3 MR. SLATER: Your Honor, I just have one brief thing
4 to say. It's Adam Slater for the record.

5 Mr. Goldberg has said this in their papers and again
6 just now that Your Honor did not address any particular
7 testimony at the hearings and that's just not true. And it's
8 in our brief, Your Honor obviously has seen it, where we
9 literally quoted where you went through specific questions and
10 answers and gave direction that these answers need to be
11 answered directly and talked about how that needs to be done.
12 So I just want to make the record very clear, as Your Honor
13 knows, you did address multiple questions and gave us concrete
14 examples and guidance.

15 Thank you.

16 JUDGE VANASKIE: Well, my recollection is that I did
17 say that in order to move the matter forward, go forward,
18 proceed with the depositions, and that if there was a belief on
19 your part that the witness was being deliberately evasive that
20 you could move for sanctions, and that's what you have done.

21 Yes, meet and confer is important but I think the
22 issue is appropriately presented at this time.

23 I think, Mr. Goldberg, you can certainly address the
24 substance of the motion that's pending before me, which a
25 resolution of which would provide guidance with respect to any

1 future disputes. I'm not saying forego meet and confer with
2 respect to any other witnesses or requests for sanctions, but I
3 am saying at this point in time, the issue had been presented
4 to me by way of several conference calls and arguments, and I
5 am not going to strike the motion for sanctions. I expect that
6 you'll be able to respond to the motion for sanctions in an
7 appropriate way and then we'll resolve the issue and that
8 issue -- that resolution hopefully will provide guidance with
9 respect to future matters.

10 So the motion to strike the motion for sanctions will
11 be denied.

12 I want to make it clear that if there are future
13 motions for sanctions, I do expect there to be a meet and
14 confer. I am doing this only because I had authorized a motion
15 for sanctions to be filed during the conference calls we had
16 during the depositions.

17 The next issue I have on the agenda letter I think
18 we've addressed already, and that was the Hetero matter.

19 Is there anything else on Hetero?

20 MR. PAREKH: No, Your Honor. This is Behram Parekh.

21 JUDGE VANASKIE: Okay. Thank you.

22 I think we're up to Page 16 of the agenda letter and
23 this is Teva's clawback request. And I received for *in camera*
24 review three email chains or three documents that are the
25 subject of the clawback request.

1 Who will be addressing this issue on behalf of Teva?

2 MS. LOCKARD: Your Honor, it's Victoria Lockard on
3 behalf of Teva.

4 JUDGE VANASKIE: All right, Ms. Lockard.

5 MS. LOCKARD: Sure, Your Honor. Thank you.

6 So, I just wanted to clarify a couple points. So, you
7 know, first of all, in plaintiffs' submission, there were
8 comments made about the number and frequency of clawback
9 documents by Teva. Just to set the record straight on that,
10 out of hundreds of thousands of documents that have been
11 produced, Teva had clawed back or attempted to claw back
12 approximately 35 documents. Twenty-six of those were
13 originally marked privileged but due to a vendor glitch, our
14 vendor produced them and we didn't claw them back. There was
15 no issue with the screening process for those.

16 There were nine documents that, you know, got through
17 the privilege screening process and we sought to claw them
18 back. Out of those, plaintiffs have all but these three.

19 So, you know, I do take issue that, you know, any
20 reference to the number of frequent -- or frequency of
21 clawbacks suggest or imply some, you know, inadequacy on the
22 part of Teva.

23 However, if you look at the three documents
24 themselves, we've had several meet and confers over these with
25 plaintiffs' counsel, and I'll take them one at a time. There

1 really are -- there are three documents but two of them are
2 essentially the same theme that were produced. And for the
3 record, it's Bates 587085 and it is the same email as at Bates
4 189928.

5 And so, you know, essentially what this is is this is
6 correspondence with Teva's outside legal counsel, Cathy
7 Burgess, who is a partner at the law firm of Alston and Bird,
8 who is Teva's regulatory counsel.

9 Ms. Burgess was hired to help the company remediate
10 and rectify some issues that arose from an FDA inspection of
11 Teva's facility in Davie, Florida. This facility, by the way,
12 doesn't have anything to do with valsartan. It doesn't
13 manufacture or repackage valsartan. It's totally unrelated to
14 valsartan. Nonetheless, Ms. Burgess was hired to help the
15 company with this issue of remediation, rectifying it, and in
16 the process, Teva and Ms. Burgess also hired a vendor, Parexel,
17 who's also noticed on the email string.

18 As you can see from the email, the email itself
19 forwards certain documents that enclose responses to FDA.
20 We're not taking the position those are privileged. We've
21 agreed they are not. They have been produced, no excuse. But
22 the email forwarding, from Teva to their outside counsel, these
23 documents with references within that email to a discussion
24 that was had with counsel and their vendor about how to rectify
25 and remediate these issues, we firmly take the position that

1 this is privileged. We can't fathom how it could not be
2 privileged. It clearly references -- it's a communication with
3 outside counsel, it references a discussion that they've had.

4 Now, whereas the fact that Teva has had a -- has had
5 contact with their lawyers is not privileged, this we
6 believe -- this email reveals exactly what was discussed during
7 those attorney-client conferences. It's the discussion that's
8 referenced in the email related to the response to the
9 regulatory activity. And so we think this, you know, crosses
10 the line and we should be entitled to claw back this document.
11 There's going to be no benefit to this in the litigation in any
12 event because it doesn't even relate to valsartan. So that's
13 the first issue.

14 Would you like me to move on to the second?

15 JUDGE VANASKIE: Let's hear from plaintiffs on this
16 first issue.

17 MS. HILTON: Good morning, Your Honor. This is Layne
18 Hilton on behalf of plaintiffs.

19 With respect to these two emails, you know, I'll
20 simply note that, first of all, the communication itself is an
21 email from a Teva employee to a Parexel employee. The attorney
22 from Alston and Bird is simply copied on the email. To the
23 extent that Ms. Lockard makes the statement that this -- that
24 the body of the email references a discussion, you know,
25 obviously, the fact that a discussion occurred would, in and of

1 itself, not be privileged, and I would, you know, offer to Your
2 Honor that all of the information that's contained in this
3 email, i.e., either it be in the subject line, the attachment,
4 this would all be information that we would receive on a
5 privilege log if -- if this email were to be deemed privileged.

6 So there's nothing within the body of the email that
7 we believe, you know, evidences a substantive communication
8 between an attorney and the client. In fact, you know, simply
9 copying an attorney on an email, as the, you know, the Court
10 has held in the *Human Tissue Products Liability Litigation*,
11 does not itself render the communication privileged.

12 And just one further point, you know, to Ms. Lockard's
13 comment that the Davie, Florida, facility had absolutely
14 nothing to do with valsartan, on meet and confers, Teva has
15 represented that the Davie, Florida, facility actually received
16 valsartan for distribution in the United States. And if I'm
17 not mistaken, one of the attachments to this email that was
18 produced to us actually makes reference to valsartan products
19 within the FDA inspection.

20 JUDGE VANASKIE: All right. Anything else on this,
21 Ms. Lockard?

22 MS. LOCKARD: The only thing I would say to that is
23 that, you know, reference to valsartan in the documents
24 themselves doesn't indicate that any of the -- any of the
25 warning letter itself or the issues that were addressed in the

1 warning letter relate to valsartan made at this Davie facility;
2 it just simply was not and it's not a facility that's at issue
3 in this litigation. They do -- to the extent that the FDA
4 documents themselves reference valsartan, they have those
5 documents and, you know, those are not privileged, they're not
6 at issue. But the letter itself or the correspondence itself,
7 I mean, it is -- it's clearly within the framework of
8 attorney-client privileged information. The fact that Cathy
9 Burgess, who is their lead outside regulatory counsel, is on
10 the cc line, you know, doesn't take away from that. You know,
11 she was actively involved in counseling on these issues along
12 with Parexel and we believe there's enough content in the email
13 itself that, you know, if we start to produce items and
14 documents like this, we're going to get into, you know, a
15 slippery slope of exactly what falls within the privilege, and
16 we don't think that this does nor, you know, should the fact
17 that she's on the cc line make a difference here.

18 JUDGE VANASKIE: I agree with Ms. Lockard's position
19 on this. This is communication that involved outside counsel.
20 The nature of the document indicates what was being discussed
21 and it included those FDA inspection responses, et cetera. I
22 think this is covered by the attorney-client privilege, these
23 two emails, and that they should be clawed back, Teva's
24 entitled to have them clawed back. Clawed back? I'm not sure
25 how you say that. But that's the Teva 587085 and Teva 189928

1 documents.

2 So let's proceed then to the last document, which is
3 Teva 1899 -- no, no, I'm sorry, Teva 650876. This is an email
4 chain involving Rachel Gallagher as the Teva lawyer, as I take
5 it.

6 MS. LOCKARD: Yes, you're correct, Your Honor. Thank
7 you.

8 So, this email chain, and it's, as you said, 650876,
9 so there are two lawyers actually on this chain, one is Kristen
10 Bauer, and plaintiffs' counsel have agreed that the email from
11 Kristen Bauer from September 18, 2018, may be clawed back and
12 redacted.

13 There are emails at the beginning and end of this
14 chain which are not at issue. But there are three emails in
15 the beginning -- or, excuse me, in the middle of this email
16 chain from -- two emails from Jens Nassall and one from Claire
17 Lyons. All three are employees at Teva and these emails were
18 sent in the process of Teva's formulating its response to the
19 NDEA issue both in anticipation of litigation and with respect
20 to formulating their response to the regulators. And as you
21 noted, Rachel Gallagher is copied -- is a recipient, not
22 copied, but is a recipient of the three emails. Ms. Gallagher
23 is inhouse counsel for Teva. She was and is today actively
24 engaged in the defense strategy for Teva. She was included on
25 this email at the time when litigation was anticipated. She

1 was, you know, included for purposes of seeking legal advice,
2 and there are, you know, specific questions within the emails
3 that implicate counsel and legal advice, without getting into
4 the substance of this, since we're on the record at this point.

5 And so, you know, we do -- while we agree, you know,
6 simply copying counsel, inhouse counsel, you know, doesn't
7 convey privilege in every instance, but in this case where it's
8 obvious that the client and the attorney were actively involved
9 in synthesizing the information in order to formulate a
10 response in anticipation of the litigation and a response to
11 regulators, we do believe that these emails, these three,
12 should also be considered privileged and that we should be
13 entitled to claw back and redact those.

14 JUDGE VANASKIE: All right. Let's hear from Ms.
15 Hilton.

16 MS. HILTON: Your Honor, for some context regarding
17 these emails regarding NDEA that Teva is now seeking to claw
18 back, in the months, you know, from July of 2018 until November
19 of 2018 when Mylan recalled this product due to NDEA concerns,
20 Teva was sourcing valsartan API from both ZHP and Mylan. And
21 so to the extent that these emails, which we do not believe
22 consist of any sort of attorney-client communication or
23 privilege, discuss NDEA, it is highly relevant to the question
24 of whether Teva had notice that perhaps the valsartan API
25 manufactured by Mylan contained NDEA, and if so, why it took

1 until November, you know, for Teva to recall those specific
2 products. So that's just sort of the overarching factual
3 underpinning that is necessary in order to adequately review
4 these documents.

5 One of the emails, without, again, getting into the
6 content of the email because we are on the record and Teva is
7 claiming they are privileged, is actually a direct verbatim
8 copy of an email that Teva received from ZHP, from an employee
9 at ZHP by the name of Karen Zu. So to the extent that Teva's
10 claiming that that email, and I'm referring to the email that
11 appears on page ending 878, the September 18th, 2018, email
12 sent at 1:44 a.m., this is obviously, on its face, not
13 privileged because it consists of a communication from a third
14 party, in this case ZHP.

15 Beyond that, we believe that all of these
16 communications had -- you know, up until the communication from
17 Ms. Bauer that plaintiffs do agree is privileged and should be
18 redacted, are communications of a business nature between Jens
19 Nassall and Claire Lyons regarding this potential NDEA issue
20 and go to Teva's knowledge of NDEA as a potential impurity in
21 valsartan API and what steps Teva then undertook upon
22 understanding that there was a potential for NDEA to form under
23 certain circumstances, you know, between the months of, let's
24 say, July and November of 2018.

25 And I'll also note that, you know, Ms. Lyons was a

1 deponent, she was a fact witness but she was a deponent, she
2 had been deposed, and I believe my colleague, Mr. Stanoch,
3 presented her with one of these emails and some of these
4 communications and only a week later were these emails and
5 communications clawed back. And now, in doing so, it would
6 effectively preclude plaintiffs from deposing Teva's 30(b)(6)
7 corporate designee, Jens Nassall, who has not sat for a
8 deposition yet because of COVID-related travel issues, we would
9 be precluded from presenting him with these non-privileged
10 emails and probing the company's knowledge of NDEA in the
11 months prior to when its products containing Mylan API that
12 contained an NDEA contamination were recalled.

13 JUDGE VANASKIE: Anything else on this issue?

14 MS. LOCKARD: Well, Your Honor, a couple points there.

15 To the extent that there is a quote from an email from
16 ZHP that is basically replicated in this email chain that we
17 believe is privileged, they have the underlying email from ZHP
18 to Mr. Nassall so what's precluding plaintiffs from using that
19 or asking any of the witnesses about that email or the
20 information within it.

21 In terms of when we notified or attempted to claw
22 back, we have, for each of these documents, always been in
23 compliance with a protective order, you know, regarding the
24 timeline. It's I believe a ten-day timeline for notification
25 and we were compliant with that. So as we are expected to do,

1 you know, we looked into these, we investigated, looked in and
2 formulated the conclusion as to whether we thought they were
3 privileged or not and should be clawed back and that's why, you
4 know, it took a few days for us to make the request. So I
5 don't think anything should be taken away from that from the
6 time period itself.

7 MS. HILTON: Your Honor, if I just may respond --

8 JUDGE VANASKIE: You may.

9 MS. HILTON: -- to Ms. Lockard's point that
10 duplicative emails should somehow be a factor. You know, our
11 position is that privilege is obviously -- Teva has the burden
12 of demonstrating that the document is privileged and that
13 burden is a document-by-document assessment. To the extent
14 that there may be some different version or iterative version
15 that contained some of the language within, you know, this
16 email from Karen Zu to Jens Nassall, that actually is not
17 really relevant to the question of whether the communication
18 itself is one that is privileged.

19 And so I would simply ask that, you know, even if
20 there are other emails that we could use that that not
21 necessarily be an assessment as to whether the contents of the
22 actual communication are entitled to the protection of
23 attorney-client privilege.

24 MS. LOCKARD: I agree it does need to be evaluated
25 individually, Your Honor, but my point was responding to

1 counsel's suggestion that somehow their hands are tied about
2 deposing Mr. Nassall on the content of at least one of these
3 emails.

4 JUDGE VANASKIE: Here's what would be helpful for me
5 to resolve this because I think in an email chain, certain
6 emails may be protected and others may not be protected. I'd
7 like to see what you propose to redact from this email chain so
8 I can see what will be produced and what would be withheld for
9 purposes of making my determination of whether you're entitled
10 to a clawback of that which you redact. So I will ask you to
11 provide to me expeditiously a redacted version of this email
12 chain so I can have a clearer understanding of what you agree
13 is not protected and what you claim is protected. Can you do
14 that for me?

15 MS. LOCKARD: I can do that in about three minutes,
16 Your Honor.

17 JUDGE VANASKIE: Okay, very well.

18 MS. LOCKARD: I'll take care of that, if you need to
19 move on to the next issue, and you should have it momentarily.

20 JUDGE VANASKIE: All right, we'll move on to the next
21 issue. Thank you.

22 MS. HILTON: Thank you, Your Honor.

23 JUDGE VANASKIE: Thank you.

24 The next issue I have is the plaintiffs' second set of
25 requests for production to the wholesaler defendants. I think

1 this has been agreed upon. This is with respect to the
2 wholesaler defendants. And this appears at Page 18 of the
3 defendants' agenda letter.

4 MS. WHITELEY: Yes, Your Honor, this is Conlee
5 Whiteley on behalf of the plaintiffs.

6 That issue has been resolved.

7 JUDGE VANASKIE: All right. Is there anything that I
8 need to be doing with this?

9 MS. WHITELEY: No, Your Honor. There are a few issues
10 that we're going to continue to meet and confer about but
11 there's nothing ripe. And I believe we're in agreement on this
12 and we need -- just we'd need for you to bless our agreement
13 and in the past these have been entered as an order and that's
14 what the parties have agreed to for you to do here.

15 JUDGE VANASKIE: All right. Can you submit to me a
16 proposed order for me to accomplish that?

17 MS. WHITELEY: Yes, Your Honor.

18 JUDGE VANASKIE: All right. Please do.

19 MR. GEOPPINGER: Your Honor, Jeff Geoppinger for the
20 wholesaler defendants.

21 We'll work with Ms. Whiteley and Mr. Stanoch on that
22 proposed order with those and address the timing which I expect
23 will probably be similar to how we've handled it before on the
24 previous requests.

25 One just point to make. I know there is -- we are

1 going to continue negotiations on a couple requests. However,
2 I'll note just for the record that those requests are similar
3 to the ones that the pharmacy defendants -- that have been made
4 to the pharmacy defendants and they will be discussed here
5 shortly I assume. So whatever comes out of today's conference
6 will guide us in our further negotiations, I anticipate.

7 JUDGE VANASKIE: Oh, okay. All right. Yes, that's
8 what we are going to get to next, the second requests for
9 production from the pharmacy defendants. And there is an issue
10 here that needs to be addressed dealing with what is described
11 as a new draft request.

12 And who will be addressing this issue on behalf of the
13 plaintiffs?

14 MS. WHITELEY: I am, Your Honor. This is Conlee
15 Whiteley.

16 JUDGE VANASKIE: Okay. Ms. Whiteley.

17 MS. WHITELEY: Okay. Thank you, Your Honor.

18 First of all, we believe that the remaining requests
19 for production that have been agreed to should be entered just
20 as we have agreed with the wholesalers and that there is no
21 reason to have this held up based on any additional -- unless,
22 you know, it's resolved today, that's fine, but we believe that
23 the meet-and-confer process was ended prematurely and that in
24 the event that it's not resolved today, the -- all the
25 interrogatories -- I'm sorry, requests for production that have

1 been agreed to should be entered and so that we can receive
2 responses.

3 And as to the fact the argument that it's a new
4 request, we have been asked repeatedly by Judge Schneider and
5 then also have been given guidance by you to pare down our
6 requests, and since the very beginning of this litigation we
7 have been working to determine some of the tracking data and
8 we've gone at it at several different ways. I think all
9 defendants have agreed that this is relevant to determine how
10 to trace the lots and batches.

11 The retailer defendants have admitted that they do not
12 keep certain information. We've come to understand that that's
13 the case but we are still trying to fill some gaps and this is
14 one of the interrogatory -- the requests for production of
15 documents we feel that will fill that gap.

16 So we maintain that it's not a new request, it's just
17 a way to be more specific and pare down the original request
18 that we've been dealing with over the past months and years.

19 Also, I would say that to the extent any prematurity
20 issues have been raised here, we're now in the second phase of
21 discovery and all discovery against the retailer and wholesaler
22 defendants must be completed by October 4th. And so we would
23 suggest that now is the time to wrap up any additional
24 discovery, including this, so that we can have it completed in
25 time.

1 JUDGE VANASKIE: All right.

2 MS. WHITELEY: As to the substance of the actual
3 request and the meet-and-confer process, the retailers have not
4 articulated to our satisfaction any actual undue burden. They
5 have suggested that this information can be found more
6 specifically elsewhere. We have looked at it from our
7 perspective and we do not believe that it's duplicative. We
8 would need more information from them perhaps through way of an
9 exemplar or additional detail for us to determine that that's a
10 valid objection. And for the same reason we can't assess the
11 proportionality because we don't have enough information.

12 As for the actual substance of the request, the
13 manufacturers maintain the batch and lot information for all of
14 the API and finished dose products. And as I mentioned before,
15 the retailers have stated they don't keep records of the lot
16 numbers for finished dose dispensed to the particular plaintiff
17 because they're not required to. But they do provide inventory
18 forecasts and estimates for finished dose valsartan and we
19 wanted to review these records in tandem with the
20 manufacturers' sales records which do have the lots sold and
21 the date of sale to allow us to extrapolate which lots of the
22 finished dose were provided to which retailers and when.
23 And --

24 JUDGE VANASKIE: I don't understand how that -- I'm
25 sorry to interrupt you, but --

1 MS. WHITELEY: That's okay.

2 JUDGE VANASKIE: -- I'm really struggling with how
3 getting forecasts how to identify which lot was sold to a
4 pharmacy that then sold the drug to a particular purchaser, I'm
5 having trouble putting that together.

6 MS. WHITELEY: Okay. What -- it's our understanding
7 that these forecasts do contain some of the information about
8 batch and lot numbers, and if they don't, that's part of the
9 meet-and-confer process that we would, you know, anticipate
10 being shown that and why, if we were to see an exemplar or be
11 demonstrated in some way that it could not do so; but what we
12 have seen based on testimony and other documents that we're
13 putting together, you know, it's our belief that there's enough
14 information in there to at least narrow the window of time
15 which certain batches and lots were being dispensed and when
16 they end and when the new one began.

17 JUDGE VANASKIE: But you already have from the
18 manufacturer defendants, do you not, the information concerning
19 batches and lots that were sold to a particular pharmacy or
20 not? To a particular retailer, I probably should phrase it
21 that way.

22 MS. WHITELEY: Right, we do. And then what we're
23 trying to determine from there is once it goes all the way to
24 the actual -- the purchaser, the consumer, we're trying to
25 figure out which lot and batch -- we have the NDC code and now

1 we're trying to bridge that gap where the retailers are not
2 required to keep certain information. And so at least we can
3 narrow it down to certain time periods where they had these
4 lots and batches within their possession and the forecasts can
5 show when they're about to run out and when they're going to
6 need more; and to the extent they contain any of the dates and
7 this information, it can show that the window in which the
8 actual plaintiff purchased would be in the window of a certain
9 batch by looking at those records. It may not be precise but
10 we can certainly narrow it down further. And, you know, to the
11 extent we were given an exemplar of this information, we could
12 work with the defendants to determine whether it is actually
13 going to provide, you know, assistance to us in that regard or
14 not, and that's a process I think that we need to undertake.
15 Right now we've suggested a few different ways to handle it,
16 but we, you know, at some point, while we all met and conferred
17 in good faith, the retailers' position is that it's unnecessary
18 to provide it or discuss it further, which is another reason
19 why I believe the rest of the discovery should go ahead and be
20 entered and move forward with that while we sort through this
21 issue.

22 JUDGE VANASKIE: All right.

23 MS. RICHER: Your Honor, this is Kristen Richer on
24 behalf of the pharmacy defendants. Could I respond to that?
25 And I'm not sure if Ms. Whiteley is finished.

1 JUDGE VANASKIE: I hope so. I want to hear from you
2 right now. Yes.

3 MS. RICHER: Okay. Great.

4 So I think the first thing I just want to quickly
5 address is this notion that we ended sort of the meet and
6 confer prematurely. You know, the way that -- the way that
7 this was posed to us on Wednesday of last week when we heard
8 that from plaintiffs on that was that it was essentially a
9 binary offer. We could agree to take this disputed request out
10 of the set and continue negotiating it but the plaintiffs were
11 only interested in doing that if we were willing to commit to
12 producing something; and if we were not willing to commit to
13 producing something, then we should go ahead and tee it up for
14 the Court. You know, obviously, given the substance of
15 concerns we have about why this is even necessary and the real
16 question that I think surrounds what production of this data
17 would even accomplish, we could not agree to produce something
18 at that point in time. And so I responded on Friday to Mr.
19 Stanoch and asked for a call. And then when he was unavailable
20 because he was traveling, understandably, in advance of
21 Memorial Day weekend, I sent him a couple of emails over the
22 course of the weekend explaining our position on this. That is
23 a position that has been explained on prior meet and confers,
24 so I -- you know, I don't think this is any sort of sudden
25 dramatic shift in things but it was largely a reaction to the

1 way that the offer was posed to us, which was to continue
2 negotiating with a commitment to produce something or to tee it
3 up for the Court for Your Honor now.

4 You know, I'll add that given our concerns that were
5 -- we phrased in the letter for Your Honor are pretty baseline,
6 fundamental objections regarding the need for this information
7 and the value of producing it relative to a burden of producing
8 it, we thought it made more sense to bring it up with the Court
9 now with the understanding that there are discovery deadlines
10 coming up in the case and we didn't want to be seen as trying
11 to just delay discussion of this issue.

12 So that's sort of the timing of how we got to where we
13 are, and I think that's an important context for Your Honor's
14 consideration.

15 And regarding the substance of the request itself, you
16 know, we agree with what Your Honor has asked plaintiffs here.
17 We also don't understand how this actually accomplishes what
18 they're trying to do at the end of the day, which is to
19 establish some sort of traceability. Given the already very
20 concrete purchasing and sales data plaintiffs have, which was
21 produced on a transaction-by-transaction basis, that seems to
22 us to be the best evidence of the rate at which this product
23 was moving through the supply chain. Most, if not all, of the
24 pharmacies produced sale-by-sale dispensing reports of their
25 dispensing of this drug to consumers over an eight-year time

1 period. That seems to us to be very, very concrete data. And
2 I'll add that it was quite burdensome and involved some
3 enernalist to produce that data, let alone the cost to
4 anonymize that data which we produced, the sales data, to avoid
5 any sort of privacy concerns.

6 You know, in contrast, the data that seems to be
7 requested here regarding inventory forecasts doesn't seem to
8 accomplish anything on the traceability front. Plaintiffs seem
9 to be seeking data regarding how quickly a retailer believed
10 that the time that it would have spent the forecast that it
11 would go through the remainder of the inventory of a specific
12 NDC that it had on hand so that they can triangulate, in their
13 own words, specific purchases of product. But I think adding
14 that complex layer of data here doesn't really solve the
15 traceability problem for them. And to just -- to explain why,
16 I think it's helpful to just talk through some examples of why
17 that's the case.

18 Estimates and beliefs, from a very fundamental level,
19 regarding the days that the inventory on hand are just that,
20 they are estimates. They do not establish whether the pharmacy
21 actually went through product that quickly, whether a certain
22 lot of a particular product fully or only partially made it
23 into the bottle picked up by the plaintiff at the pharmacy,
24 whether all of the inventory on hand is actually from the same
25 or from different lot numbers, it doesn't control for our

1 differences in dispensing rates across the thousands of stores
2 that most of these defendants have, and it can't control for
3 patients picking up their prescriptions early or not picking
4 them up at all such that the estimates really, at the end of
5 the day, like I said, are just estimates. And the only real
6 measure here of what was sold and when is the sales data that
7 the pharmacies have produced; and similarly, the only real
8 marker here of what was purchased is the purchasing data that
9 we've already produced. Anything above and beyond that seems
10 at this point like discovery for discovery sake and seems
11 contrary to the Court's prior directive about narrowly
12 tailoring discovery against the pharmacies.

13 I'll add, too, that when we're talking about inventory
14 management, Your Honor, I think it's important to remember that
15 the pharmacies, as part of this set of negotiated document
16 requests, have already agreed to provide inventory management
17 policies, including information on how they stock and
18 distribute product, and that's something that we will be
19 producing in this round of discovery. We also anticipate that
20 plaintiffs will be seeking 30(b)(6) deposition testimony on
21 those same issues.

22 So if it's merely a question, at the end of the day,
23 of plaintiffs needing to get a feel for how the pharmacies
24 purchased and stocked supply and how much they tended to keep
25 on hand, it seems to me that there are other less burdensome

1 ways of getting that information and that we're already
2 contemplating that from plaintiffs and/or have already agreed
3 to produce those documents.

4 JUDGE VANASKIE: All right. Thank you.
5 Anything else on this issue?

6 MS. WHITELEY: Your Honor, this is Conlee Whiteley
7 again. Thank you.

8 I do think that an exemplar would resolve exactly the
9 issue that was raised right at the end about other less
10 burdensome ways to determine and get a feel for the purchase
11 and stock and supply information, and I think it would allow us
12 to get a more specific feel because if the data is not there,
13 then it ends the discussion because we obviously don't want
14 additional documents or work to do that does not get us to our
15 goal.

16 JUDGE VANASKIE: All right. I'm going to deny --

17 MS. RICHER: And on that, Your Honor -- go ahead, Your
18 Honor.

19 JUDGE VANASKIE: Go ahead. Go ahead.

20 MS. RICHER: I was going to just -- this is Kristen
21 Richer again.

22 I was just going to add that, you know, certainly we
23 understand that an exemplar on its face is less burdensome than
24 producing all forecasting data for an eight-year time period,
25 to the extent it even exists; but I think there's a real

1 question about that on our end based on initial conversations
2 we've had with our clients, given that this is a generic drug
3 and medication, this is not the sort of drug where forecasts
4 would have been sent to manufacturers in the way that
5 plaintiffs seem to be insinuating here.

6 And, you know, we've looked at the deposition
7 transcripts that we could find where this was raised.
8 Candidly, I only could find one and it doesn't really seem to
9 say that this was being done for valsartan at all. So I think
10 there's some confusion on our end about where this is even
11 coming from because it's contrary to our understanding from
12 initial discussions with our clients.

13 But certainly an exemplar is less burdensome than all
14 documents. I think the concern here is twofold: Even an
15 exemplar still raises questions about what the purpose of
16 producing it is, given the data that plaintiffs already have;
17 and, you know, of course, the concern with exemplars is always
18 whether it's just an entree into requesting all of the data,
19 which gets us back to where we are at this exact moment. So I
20 think that's the hang-up on exemplars and why we have some of
21 the concerns about proceeding with this request at all.

22 JUDGE VANASKIE: All right. As I was starting to say,
23 I'm going to deny the request to include this specific request
24 for production to the retailer pharmacy defendants. I'll deny
25 it without prejudice in terms of if you want to continue to try

1 and discuss the matter, you may, but I want to get this request
2 for production out to the retail pharmacy defendants, so I
3 expect you'll submit to me a proposed order that has the
4 approved requests for production on it.

5 I have to say, I just struggle with seeing how you use
6 the word triangulate to get to particular batch and lot numbers
7 to particular purchasers and I'm just not seeing it. So I
8 think this is a bit far afield. I could certainly understand,
9 without even getting specifics, how burdensome it would be to
10 produce it, and we can revisit, I guess, in the future perhaps,
11 if we need to, exemplars, but I just don't see it and that's my
12 problem. And it hasn't been sufficiently explained to me how
13 you can tie this to particular purchases for traceability
14 reasons. And so this request is denied. The other requests
15 are approved and please submit to me a proposed order on this
16 issue.

17 MS. WHITELEY: Will do. Thank you, Your Honor.

18 MS. RICHER: Thank you, Your Honor.

19 JUDGE VANASKIE: The next issue I have is on Pages 17
20 and 18 of the -- I think that's what it is. We have been going
21 some time now. It's the de-designation of confidential
22 documents. And this is on plaintiffs' agenda letter Pages 17
23 and 18. And it's addressed at Page 23 of the defendants'
24 agenda letter, and addressed in Exhibits D, E and F to the
25 defendants' agenda letter.

1 As I understand the issue -- I'm going to try to
2 summarize the issue here. As I understand it, plaintiffs want
3 the defendants to go back and look at all of their designations
4 and de-designate those documents that I had determined on the
5 ZHP motion to seal should not be sealed.

6 Does that at least come close to summarizing what the
7 issue is?

8 MR. SLATER: Hello, Your Honor. It's Adam Slater.

9 JUDGE VANASKIE: Yes.

10 MR. SLATER: It does. It does. I'll refine it just
11 to this extent.

12 JUDGE VANASKIE: Good.

13 MR. SLATER: What we asked the defendants to do, and,
14 obviously, Torrent was addressed specifically in Judge
15 Schneider's order and they were directed to go back, using his
16 order as guidance, and de-designate across their entire
17 production in accordance with his order, which we don't think
18 they've done. ZHP, Your Honor addressed in a fulsome opinion
19 based on a number of documents, so ZHP has direct guidance on
20 their documents.

21 So what we did is we went to all the other defendants
22 who, from our perspective, have massively over-designated and I
23 think that our motions directed to Torrent and ZHP, at least as
24 to those defendants, have demonstrated extensive
25 over-designation as confidential, and what we said is, look,

1 you have massively over-designated as confidential documents.
2 In accordance with what Judge Schneider said and the guidance
3 that Your Honor's decision gave, we asked the defendants to
4 de-designate in accordance with those decisions, and then when
5 they're done with that we can go back and if there's documents
6 that remain designated, we would then have to approach them
7 and, you know, I unfortunately say this, come back to the
8 Court. We thought this was the most efficient way to proceed
9 and that's what Judge Schneider had indicated to Torrent. That
10 was the exemplar approach.

11 It's them who seem to be saying, no, what we want the
12 plaintiffs to do is identify each document one by one,
13 challenge every document, and I don't want to overuse the
14 analogy, but, now it will be trench warfare over confidential
15 designation. I can feel very confident Your Honor doesn't want
16 us to flood you with motions identifying hundreds or thousands
17 or tens of thousands of documents that have been improperly
18 designated as confidential. This is the exemplar approach that
19 was initiated with the Torrent motion.

20 So all we're asking them to do is do what they're
21 obligated to do under the protective order, which is to not
22 over-designate. There are parameters to what can be designated
23 confidential, that protective order remains in effect, and
24 we've said, okay, the Court has worked very hard to give very
25 specific guidance, please go back to your productions and fix

1 them. Our hope would be that in good faith the defendants
2 would go back and say, okay, we've rolled out these documents
3 during discovery, maybe we were over-designating because we
4 were trying to be efficient but we recognize that we can't
5 maintain improper designations and we'll fix that now. That's
6 what we think the protective order and the court rules and the
7 law requires. We're, frankly, astounded that we're being
8 pushed back on and that the defense is saying, no, challenge
9 every document, come to the Court with motions. So that's what
10 our position is, Your Honor.

11 JUDGE VANASKIE: All right. Thank you.

12 Who will be addressing this issue on behalf of the
13 defendants?

14 MS. BONNER: Judge Vanaskie, I'm sorry to interrupt.
15 My name is Kelly Bonner. And briefly before the other -- the
16 other defendants speak, may I please speak on behalf of the ZH
17 parties to clarify what I believe was a mischaracterization of
18 your order regarding the order on the ZHP parties' sealing
19 motion.

20 We, you know, again, we respect the order, we've been
21 through it fulsomely. We disagree that the order on the ZHP
22 sealing motion instructed ZHP to go back and de-designate --
23 re-review almost 400,000 pages of produced documents and
24 de-designate, preemptively de-designate. We don't -- we do not
25 read it that way. The only purpose -- we do not read it that

1 way. In fact, we -- you know, given your very clear guidance
2 in Footnotes 5 and 6 and 10 and your document-by-document
3 analysis, we read your order as requiring the de-designation of
4 the documents at issue in the sealing motion as well as
5 specifically pled as being -- as being subject to FDA approval,
6 but we do not read your order as requiring us to go back and
7 re-review 400,000, 400,000 documents and correct 400,000
8 documents, 3.5 million pages.

9 JUDGE VANASKIE: All right. Thank you for that
10 because I agree with your reading of my order. So maybe I can
11 cut to the heart of this.

12 I don't expect the defendants to go back and review
13 their designations. I do expect that the plaintiffs, if they
14 want documents de-designated, they will identify those
15 documents that they believe should being de-designated, then I
16 expect the defense to go back and look at those documents and
17 make a determination as to what should be de-designated in
18 accordance with the guidance I have provided. If they decline
19 to de-designate and then the plaintiffs must file a motion on
20 that issue, I will consider at that time imposing monetary
21 sanctions against the defendants who have not followed the
22 directions that were set forth in that decision. But no, I'm
23 sorry, Mr. Slater, I did not expect that the defendants would
24 go back and now review hundreds of thousands of documents.

25 I understand that a purpose of the protective order

1 was to facilitate discovery and that does indeed lead to
2 over-designation of documents. I understand that. I always
3 was reluctant when I was a trial judge to agree to
4 self-executing confidentiality orders but they are necessary in
5 cases of this magnitude. But the appropriate approach here is
6 if the plaintiffs believe that particular documents should not
7 be designated, the reason why they should not be designated,
8 because you have access to the documents, you have the use of
9 the documents, this is for purposes of putting them out in the
10 public, I take it, I expect that you'll identify those
11 documents, and then the defense has the obligation to follow
12 the protocol in the protective order for making these final
13 determinations. And only then, after you've had a meet and
14 confer on the issue, then I would expect something to be
15 presented to the Court for resolution, with this warning: That
16 if the guidance provided in the decisions from Judge Schneider
17 and in my recent decision are ignored, then sanctions would be
18 imposed, monetary sanctions would be imposed.

19 MR. SLATER: Thank you, Your Honor. And I understand
20 that, just I was not saying that you had directed ZHP to do it;
21 I was saying that based on that direction and that guidance, we
22 thought that they should. But I understand your ruling and we
23 appreciate what you stated because we were looking to avoid the
24 need to do this wholesale review which we're now going to have
25 to do.

1 As to Torrent, I would just caution and I would like
2 to just set that apart, Judge Schneider directed Torrent to
3 clean up its production, use his order based on the five or six
4 documents that were exemplars, and did direct Torrent to do a
5 wholesale de-designation across their production. So I would
6 just like to clarify for the record that they were directed to
7 do so and Torrent should be required to do so; and if they
8 don't, we're probably going to have to come in to enforce that
9 order.

10 JUDGE VANASKIE: Let's hear from Torrent.

11 I want to make it clear, I wasn't addressing the
12 impact of Judge Schneider's order with respect to Torrent. So
13 let's hear from Torrent.

14 MS. BRANCATO: Thank you, Your Honor. This is Alexia
15 Brancato for Torrent.

16 So, Judge Schneider's order did require Torrent to use
17 the five or six exemplars and go back and de-designate similar
18 documents, which Torrent did do several months ago now at this
19 point. And between when we did that, which I believe was
20 February this year, and now, we have not heard from plaintiffs
21 at all. This is the first time I'm hearing of any issue
22 related to the documents that we de-designated or any
23 complaints that we should have done more or less or whatever it
24 may be. And so I don't think this issue is ripe for Your
25 Honor's consideration right now and would disagree with all the

1 different connotations that plaintiffs have made at this time.

2 MR. SLATER: Yes, and we're not asking for an order
3 from Your Honor on Torrent right now. We have a differing
4 position. We'll meet and confer with them and if it can't be
5 resolved, I would think at that point it would be an issue for
6 the Court.

7 JUDGE VANASKIE: All right. Very well. Thank you.

8 All right. I think the final issue --

9 MR. HARKINS: Your Honor, one more point on that. I
10 apologize. This is --

11 JUDGE VANASKIE: That's all right. Who is this?

12 MR. HARKINS: Steve Harkins with Greenberg Traurig for
13 the Teva defendants.

14 JUDGE VANASKIE: Okay.

15 MR. HARKINS: The other issue that we identified in
16 there, and I believe Your Honor's statements likely covered it
17 but I just want to clarify, the same issue was raised with
18 respect to defendants' confidentiality designations of
19 deposition transcripts, and we similarly believe that to the
20 extent plaintiffs disagree with those, those should be raised
21 on an individual basis. And I was just hoping to get clarity
22 on that to the extent there's any difference in the Court's
23 view on how that should be handled.

24 JUDGE VANASKIE: There is no difference in my view in
25 terms of how that should be handled. To the extent that

1 plaintiffs believe that excerpts of depositions have been
2 properly designated as confidential, I expect that they will
3 identify that for the individual defendant at issue and a
4 determination would be made by that defendant whether to
5 de-designate or not, and then the issue can be, after a meet
6 and confer, properly presented for resolution.

7 MR. HARKINS: Thank you, Your Honor. We appreciate
8 it.

9 JUDGE VANASKIE: Thank you.

10 All right. Now, I think I'm up to Page 27 of the
11 defendants' agenda letter, which is the defendants' most recent
12 interrogatories and requests for production to plaintiffs.

13 Who will be addressing this issue on behalf of the
14 defendants?

15 MS. LOCKARD: Your Honor, it's Victoria Lockard for
16 Teva and the defendants.

17 JUDGE VANASKIE: All right.

18 MS. LOCKARD: So, Your Honor, we served these very
19 limited set of discovery requests on plaintiffs on May 24th.
20 We heard nothing back. In all candidness, you know, we
21 expected that plaintiffs would reach out and there would be a
22 meet-and-confer process. We heard nothing from them until they
23 added these to today's agenda.

24 The requests themselves are, like I said, limited;
25 there are six interrogatories and nine requests for production.

1 The -- you know, the intent behind these was not to have
2 plaintiffs go back to each of their individual plaintiff to
3 gather more information over and above what has been gathered
4 through the fact sheet process, but if you review them, it's
5 really directed largely at information that should be in
6 plaintiffs' counsel's possession that would not have been
7 implicated through the fact sheet process, things like any
8 testing that plaintiffs' counsel have undertaken, those sort of
9 items.

10 So, you know, we certainly -- we -- you know, we
11 acknowledge Judge Schneider was concerned about having the
12 plaintiffs have to go back to their individual clients over and
13 over again, and we have really drafted these in ways to try to
14 seek to avoid that.

15 Judge Schneider has never said that additional
16 interrogatories would not be allowed. What he said is that he
17 would issue the plaintiffs' fact sheets without prejudice to
18 defendants' right to seek additional information for good cause
19 shown. So we do think that we can establish good cause for
20 these tailored limited requests seeking information in
21 plaintiffs' counsel position -- possession.

22 The scheduling order, you know, plaintiffs have
23 referred to the scheduling order suggesting that somehow bars
24 additional discovery, and, frankly, it doesn't. On its face
25 the scheduling order issued by Judge Kugler doesn't address

1 written discovery at all. It specifically addresses
2 depositions and expert reports for general causation experts
3 and class action experts. It really doesn't address written
4 discovery. And, you know, discovery -- fact discovery is not
5 closed in this case. There's no bar, there's no, you know,
6 preclusion on serving this if we're able to establish good
7 cause for it. You know, the process arguments that plaintiffs
8 have raised, you know, there has never been an instituted or
9 institutionalized process that requires us to seek plaintiffs'
10 permission to serve discovery. You know, we agree we should be
11 meeting and conferring over these. We sent these over to
12 plaintiffs. We believe the onus is then on plaintiffs to come
13 back and have a meaningful meet and confer over that, and we're
14 still willing to do that, you know; but I don't think the
15 response of just having these requests absolutely stricken
16 without a meet and confer or without us being able to establish
17 good cause for them really is the right approach at this point.

18 So we would ask the Court to allow the parties to meet
19 and confer to determine if there is any middle ground that we
20 can agree on and bring any disputes back to the Court at the
21 next status conference.

22 JUDGE VANASKIE: All right. Thank you.

23 Who will address this for plaintiffs?

24 MR. SLATER: Hello, Your Honor. It's Adam Slater
25 again.

1 JUDGE VANASKIE: All right.

2 MR. SLATER: Our position is that we're now in the
3 final steps of the deposition phase of the case, we're about to
4 enter the expert discovery phase of the case, which is then
5 going to spill over into the class certification briefing, and
6 the defendants are now trying to initiate paper discovery when
7 that phase of the case was along-ago, and Judge Schneider was
8 very clear on the record of how that was going to proceed. So
9 from our perspective, the idea that we'll now be served with
10 these -- and let's be very clear, they're contention
11 interrogatories and requests for documents and they're -- which
12 are, basically, give us the documents that you're referring to
13 with your answer that are relevant to the interrogatory, and
14 questions about what our experts are relying on. That's for
15 the expert phase of the case. They're going to see what our
16 expert reports say.

17 And I left one thing out. There's the Daubert phase
18 that's coming after the expert discovery, which is what the
19 defendants have been focusing on in this litigation quite,
20 quite clearly for months and months and months.

21 So we're way beyond now being served interrogatories
22 that should have been asked a long time ago; and, frankly, if
23 there was a meet and confer, I think it would have been very
24 clear they were not appropriate.

25 We would like to avoid having our attention pulled

1 from the very important work we're doing, which is set forth in
2 the case management order, back to now meet and confer and
3 argue about these interrogatories and corresponding requests
4 for documents. We'd rather be able to focus on what's in the
5 case management order, what the defendants said they needed to
6 do when the case management order was revised earlier this
7 year, and focus on getting into the expert discovery, the
8 Daubert, and the most important things that are happening now
9 in the case.

10 JUDGE VANASKIE: All right. Thank you.

11 Yes, I think Judge Schneider was very clear, no
12 interrogatories was to be handled through fact sheets, and we
13 are at a stage of the case where this is being raised near the
14 close of this phase of discovery.

15 I'm going to disallow these discovery requests as
16 inconsistent with the approach that has been laid out and
17 carefully followed in this case thus far. The information that
18 is being sought will undoubtedly come in expert witness
19 discovery, and to the extent that certain information like
20 testing of individual plaintiff's drugs doesn't come out, well,
21 that should have been handled sooner. So these discovery
22 requests will be disallowed.

23 Anything else to address before we get Judge Kugler on
24 the phone?

25 MR. SLATER: Nothing for plaintiffs, Your Honor.

1 JUDGE VANASKIE: All right.

2 MR. GOLDBERG: Nothing from defendants, Your Honor.

3 JUDGE VANASKIE: All right. Thank you.

4 And I'm going to hang up, call Judge Kugler, stay on
5 the line, and we'll have Judge Kugler join us. Thank you.

6 MS. SMITH: Judge Vanaskie, before you leave, I just
7 want to let you know -- this is Loretta -- that Judge Kugler is
8 on the bench in a hearing right now.

9 JUDGE VANASKIE: Okay.

10 MS. SMITH: I'm not sure how long it will last. I
11 would certainly call him but I don't think you'll have an
12 immediate follow through with Judge Kugler right now.

13 JUDGE VANASKIE: Okay. So perhaps we should agree to
14 reconvene with Judge Kugler?

15 MS. SMITH: Sure. I don't know how long the hearing
16 will last.

17 JUDGE VANASKIE: How long, that's the problem.

18 MS. SMITH: I will say it's a pro se defendant in a
19 criminal matter so it may be more -- it may be better to
20 reconvene in an hour.

21 JUDGE VANASKIE: Yes, that's what I'm thinking.
22 Counsel, can we reconvene at 1:30?

23 MR. SLATER: Yes, of course, Your Honor.

24 JUDGE VANASKIE: All right. I'll leave a message for
25 Judge Kugler or, Loretta, ask you to. I'll leave a message but

1 ask you also to provide the message that we will be dialing in
2 again at 1:30 for him to address the balance of this CMC. All
3 right? Okay. Thanks.

4 Camille, you're still there?

5 THE COURT REPORTER: Yes, Your Honor.

6 JUDGE VANASKIE: Okay. We're going to sign out for
7 now. We'll see you at 1:30.

8 THE COURT REPORTER: Okay.

9 JUDGE VANASKIE: Bye-bye.

10 (The proceedings adjourned at 12:28 p.m.)

11 - - - - -

12

13 I certify that the foregoing is a correct transcript
14 from the record of proceedings in the above-entitled matter.

15

16 /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR
17 Court Reporter/Transcriber

18 June 5, 2021
19 Date

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